

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EMILY'S LIST,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil No. 05-00049 (CKK)

MEMORANDUM OF *AMICI CURIAE*
SENATOR JOHN McCAIN, SENATOR RUSSELL FEINGOLD,
REPRESENTATIVE CHRISTOPHER SHAYS,
REPRESENTATIVE MARTIN MEEHAN,
DEMOCRACY 21, THE CAMPAIGN LEGAL CENTER,
AND THE CENTER FOR RESPONSIVE POLITICS
IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Trevor Potter (Bar No. 413778)
J. Gerald Hebert (Bar No. 447676)
Paul Ryan
CAMPAIGN LEGAL CENTER
1640 Rhode Island Avenue, N.W.
Suite 650
Washington, D.C. 20036
(202) 736-2200

*Counsel for the Campaign Legal
Center and individual amici*

Lawrence Noble (Bar No. 244434)
CENTER FOR RESPONSIVE
POLITICS
1101 14th Street, N.W.
Suite 1030
Washington, D.C. 20005
(202) 857-0044

Counsel for Center for Responsive Politics

Donald J. Simon (Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE
ENDRESON & PERRY, LLP
1425 K Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 682-0240

Counsel for Democracy 21

Fred Wertheimer (Bar No. 154211)
DEMOCRACY 21
1825 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 429-2008

*Counsel for Democracy 21
and individual amici*

Local Civil Rule 7.1 Certificate

Civil Action No. 05-00049 (CKK)

Emily's List v. Federal Election Commission

Certificate required by LCvR 7.1 of the Local Rules of the United States District Court for the District of Columbia:

I, the undersigned counsel of record for *amici*, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Democracy 21, the Campaign Legal Center and the Center for Responsive Politics which have any outstanding securities in the hands of the public:

None

These representations are made in order that judges of this court may determine the need for recusal.

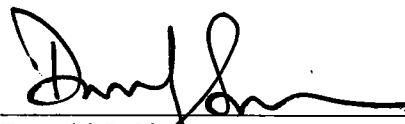

Donald J. Simon

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Three years ago, Congress enacted landmark campaign finance reform legislation, the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, to halt the rapidly escalating flow of soft money (funds that do not comply with the contribution limits and source prohibitions of federal law) into federal elections. In the 2002 campaign – the last conducted under the discredited and corrupt soft money system – *a half billion dollars* of soft money flowed through political party accounts to influence federal campaigns. Because soft money was found to cause corruption and the appearance of corruption, the provisions of BCRA aimed at stopping soft money were upheld, in their entirety, by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003).

BCRA accomplished its basic goal in the 2004 election: it ended the flow of soft money through political party committees into federal elections and stopped federal officeholders and candidates from soliciting soft money funds. Nevertheless, a lesser amount of soft money continued to be spent to influence the 2004 federal elections, this time through different vehicles and by different mechanisms. Two principal techniques were exploited. The first involved the use of so-called “section 527” groups, entities registered with the Internal Revenue Service as “political organizations” under section 527 of the tax code, 26 U.S.C. § 527. These groups did not register with the FEC as “political committees” under the Federal Election Campaign Act (FECA), and thus did not raise and spend funds pursuant to the contribution limits and source prohibitions of federal law. These 527 groups, such as The Media Fund and Swift Boat Veterans for Truth, operating outside the federal campaign finance laws, spent tens of millions of dollars of soft money in the 2004 election for broadcast ads that overtly promoted or opposed the presidential candidates.¹

The second mechanism involved soft money funds spent for voter mobilization activities. The prime example of this was America Coming Together (“ACT”), a group registered with the FEC as a political committee, that manipulated inappropriate FEC rules governing how a political committee could “allocate” between a federal and a non-federal account its spending for voter mobilization drives that affect both federal and non-federal elections. Even though it was patently clear that ACT was formed, funded and operated for the overriding purpose of influencing the 2004 presidential election, it claimed a right under the existing FEC allocation rules to fund *98 percent* of the costs of its activities with soft money. ACT spent over \$75

¹ The spending by section 527 groups is compiled on the website of the Center for Responsive Politics, at <http://www.opensecrets.org/527s/527cmtes.asp?level=C&cycle=2004>.

million dollars, virtually all of it soft money, for voter mobilization efforts to influence the presidential election in key presidential battleground states. *See* n.1.

By late 2003, it had become apparent that these twin avenues of evasion would be used by political operatives to partially continue the soft money system in the 2004 federal elections. Efforts were made – including by *amici* here – to urge the FEC to take firm and prompt steps to shut down these avenues for circumvention of the campaign finance laws. The FEC responded by instituting a rulemaking in March, 2004 to examine both of these issues.

This rulemaking ultimately concluded nine months later in November, 2004 – too late to have any impact on the 2004 campaign. The Commission took *no* action on the problem of section 527 groups that operated entirely outside the campaign finance laws, making *no* changes to its rules defining “political committee” status.² But the Commission did modify its allocation rules to prevent, on a prospective basis, the kind of manipulation of those rules that resulted in a federal political committee, such as ACT, spending almost exclusively soft money on voter mobilization activities for the purpose of influencing a federal election. 11 C.F.R. § 106.6(c) (2005). The Commission also clarified the FECA definition of “contribution” to include funds raised in response to solicitations that indicate the money will be spent to influence federal elections. 11 C.F.R. § 100.57 (2005).

It is these two rules that are challenged in this action. Plaintiff Emily’s List is a federal political committee headed by Ellen Malcolm, who was also a founder and president of ACT. Counsel for Emily’s List also served as counsel to ACT in the rulemaking at issue here. Emily’s

² The Commission’s failure to act on this matter is the subject of a separate lawsuit brought by two *amici* here, Representatives Shays and Meehan, that is pending before Judge Emmet G. Sullivan. *Shays and Meehan v. FEC*, Civ. No. 04-1597 (D.D.C.) (EGS) (complaint filed Sept. 14, 2004).

List seeks a preliminary injunction to enjoin the Commission's new allocation rule, and its clarified definition of "contribution." For the reasons set forth below, this motion should be denied.

I. Interests of the Amici

As set forth in greater detail in the accompanying Motion for Leave to file this Memorandum, Senator John McCain, Senator Russell Feingold, Representative Christopher Shays and Representative Martin Meehan are Members of Congress and are the four principal sponsors of the Bipartisan Campaign Reform Act of 2002. They participated as intervening defendants in *McConnell v. FEC*,³ and have remained active in other proceedings before the Federal Election Commission involving the interpretation and implementation of BCRA and the federal campaign finance laws generally, including the rulemaking on political committee allocation that is at issue in this case.⁴

Democracy 21, the Campaign Legal Center and the Center for Responsive Politics are all non-profit, non-partisan policy organizations that have long experience in political reforms relating to the role of money in the political process, and specifically to issues related to the enactment, constitutionality and implementation of the campaign finance laws. All three groups

³ See Order of May 3, 2002 in Civ. No. 02-582 (D.D.C.) (three-judge court) (Order granting intervention).

⁴ See Comments of Senator John McCain, Senator Russell Feingold, Representative Christopher Shays and Representative Martin Meehan re Notice 2004-6 (April 9, 2004), which can be found in the record of this rulemaking on the Commission's website, at http://www.fec.gov/pdf/nprm/political_comm_status/comm2/02.pdf.

actively participated in the rulemaking that is challenged in this action, both filing written comments and testifying at the public hearing held in this matter.⁵

II. Summary of Argument

Emily's List fails every element of the test for a preliminary injunction, and its motion should accordingly be denied.

First, plaintiff cannot show a likelihood of success on the merits. The "allocation" rule challenged in this action sets a floor requiring a federal political committee to spend at least 50 percent federal funds for its generic activities, such as partisan voter mobilization drives, and for its administrative expenses. Far from being arbitrary or overreaching, the rule is in fact modest: it still allows a *federal* committee to fund many of its activities with 50 percent *non-federal* funds. And as this court has found, the FEC could have concluded that a federal political committee must use 100 percent federal funds to finance such activities. *Common Cause v. FEC*, 692 F. Supp. 1391, 1395 (D.D.C. 1987).

Nonetheless, the new rule is a vast – and sorely needed – improvement on the prior rule, which allowed a political committee to massively manipulate its spending in order to calculate an absurdly low federal allocation ratio. A graphic example of this practice occurred during the 2004 election when one such federally registered committee – America Coming Together – claimed the right under the former rule to spend *98 percent* soft money on voter mobilization activities which it publicly claimed were for the purpose of influencing the presidential election and which were concentrated in the 17 presidential battleground states. ACT spent tens of

⁵ See Comments by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics re Notice 2004-6: Political Committee Status (April 5, 2004), which can be found in the record of this rulemaking on the Commission's website, at http://www.fec.gov/pdf/nprm/political_comm_status/simon_potter_nobel_sanford.pdf.

millions of dollars of soft money to influence federal elections through this allocation manipulation. The Commission was urged to close this loophole in its rulemaking, and it reasonably did so with its new rule, albeit too late for the 2004 campaign.

Second, Emily's List has shown no irreparable harm to itself from the new rule. FEC disclosure reports filed by plaintiff show that it has claimed, for the last five years, a 50-50 allocation ratio for its own allocated spending. Thus, Emily's List has long been operating in compliance with the new rule, which requires only 50 percent federal funding for allocated activity, and plaintiff has shown no basis for why it will be operating differently in the future. In this circumstance, Emily's List has shown no harm to itself from the rule, much less irreparable harm.

Conversely, the public, and the public interest, will be harmed by the issuance of a preliminary injunction. Such an injunction would reinstate a failed and discredited allocation regime that was exploited in the last election for massive circumvention of the FECA to facilitate the flow of soft money into federal campaigns. Granting an injunction would thus undermine the compelling public purposes served by the contribution limits and source prohibitions of the federal campaign finance laws, interests whose significance was only recently reaffirmed by this court, and by the Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003) *aff'g in part and rev'g in part* 251 F.Supp. 2d 176, 432-756 (D.D.C. 2003) (three-judge court) (Op. of Kollar-Kotelly, J.).

III. Background

A. The allocation system

1. *Origins of allocation.* The post-Watergate Federal Election Campaign Act Amendments, enacted in 1974, imposed a limit of \$5,000 per year on contributions by a person

to a federal political committee, where such funds are to be used to influence federal elections. 2 U.S.C. § 441a(a)(1)(C). Longstanding federal law also prohibits corporations and labor organizations from making contributions to political committees “in connection with” a federal election. § 441b.⁶

Early in its history, the FEC confronted the question of how to treat federal political committees that engage in “mixed” activities that influence *both* federal and non-federal campaigns. For instance, voter mobilization efforts – such as voter identification, voter registration drives, and get-out-the-vote drives – identify, register and bring to the polls voters who then cast ballots in both federal and non-federal campaigns. The same is true of “generic” efforts conducted by political committees, which are defined in FEC regulations as activities that urge voters to support candidates of one party or the other, without mentioning specific candidates. 11 C.F.R. § 100.25. Ads that say “Vote Democratic” benefit both federal and non-federal candidates of that party, and influence both kinds of elections. The same is also true of public campaign communications that refer to both federal and non-federal candidates, such as ads that say, “Vote for Senator X and Governor Y.”

The *per curiam* opinion of the three-judge district court in *McConnell* discussed in detail the history of the allocation system, observing that the Commission over time “struggled” with this issue. 251 F. Supp. 2d at 195. In the Commission’s first opinion on the matter, Ad. Op. 1975-21, it permitted a state party committee to allocate its administrative and voter registration expenses between the committee’s federal and non-federal accounts. The Commission then reversed itself in Informational Letter 1976-72, and ruled that a state party committee had to use

⁶ Notwithstanding this broad prohibition, section 441b(b)(2)(C) allows the connected organization of a separate segregated fund to pay for its administration and solicitation costs.

entirely federal funds for voter mobilization efforts, notwithstanding the impact of that spending, in part, on non-federal elections. In Ad.Op. 1978-10, the Commission reversed itself again, and held that state parties could allocate their voter drive activities between their federal and non-federal accounts.

At first, the Commission did not regulate a committee's means of allocation. The Commission adopted rules in 1977 that allowed political committees, including non-party committees, to establish federal and non-federal accounts and to allocate expenses "on a reasonable basis" between the two. 11 C.F.R. § 106.1(e) (1977); *see* 251 F. Supp. 2d. at 196. In 1987, this court held that this "reasonable basis" rule was too permissive in that it allowed a committee, as a practical matter, to determine its own allocation ratio, and thus "fail[ed] to regulate improper or inaccurate allocation between federal and nonfederal funds." *Common Cause*, 692 F.Supp. at 1395. In response, the Commission in 1990 promulgated new rules that established more specific allocation formulae. *See* "Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting," 55 Fed. Reg. 26,058 (June 26, 1990).

Under the new rules, committees were permitted to allocate payments for their administrative expenses, and for "[g]eneric voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.6(b)(2)(iii) (2002). Committees were also permitted "to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates." § 106.1(a) (2002).

The latter type of spending – for payments that refer to both Federal and non-Federal candidates – was to be allocated “according to the benefit reasonably expected to be derived.” *Id.* Thus, in the case of a publication or broadcast ad that refers to both Federal and non-Federal candidates, “the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.” *Id.* This rule applied to both party and non-party committees.

But the rules distinguished between party and non-party committees (including non-connected committees such as Emily’s List) in how to allocate spending for administrative expenses and generic voter drive activity – i.e., spending that is *not* for candidate-specific disbursements.

A non-party committee’s ratio for allocating these costs was determined pursuant to the so-called “funds expended method.” § 106.6(c) (2002). The Commission’s regulations described this as follows:

Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. . . . In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

§ 106.6(c)(1) (2002) (emphasis added).

The rules were different for party committees. For national party committees, allocation of “mixed” expenses was done by fixed percentages, depending on the year in which the spending was done. National party committees in a presidential election year were required to allocate to their Federal account a flat 65 percent of their spending on generic voter drives and administrative expenses, and 60 percent in non-presidential election years. § 106.5(b)(2)(i), (ii)

(2002). State party committees were required to use a different method based on a complex calculation of the state's "ballot composition." § 106.5(d)(1)(i) (2002).

As noted above, there were no minimum percentages imposed on allocation by non-party committees under the "funds expended" method, such as there were for national party committees.

2. BCRA and McConnell. Political committees operated under these allocation rules from the effective date of the rules in 1991 until the effective date of BCRA in November, 2002. In this period, party committees became major vehicles for circumventing the campaign finance laws and spending soft money to influence federal campaigns. In 1992, the national party committees raised about \$80 million of soft money; by 2000, that increased more than six-fold to about \$500 million. *See* 251 F. Supp. 2d at 281 (Op. of Kollar-Kotelly, J.). Congress concluded that the underlying premise of the allocation system devised by the FEC was largely a myth – allocation did not magically segregate a party committee's spending of nonfederal funds to only those activities that influence nonfederal elections. Rather, the allocation system actually enabled circumvention of the law; it authorized the spending of soft money funds on activities that were intended to, and had the effect of, influencing federal campaigns. As Judge Kollar-Kotelly said in *McConnell*:

For well over two decades, the Commission has sought to regulate the use of nonfederal funds by permitting the national, state, and local political party committees to allocate expenses on "nonfederal" activities between their federal and nonfederal accounts. The vast record in this case demonstrates that this system – a cobbled-together aggregation of FEC regulations and advisory opinions – is in utter disarray with all of the different political party units spending nonfederal money to influence *federal* elections. Congress was correct in finding that in many instances, the allocation regime was a failure.

251 F.Supp. 2d at 651. (Op. of Kollar-Kotelly, J.).

In BCRA, Congress banned national party committee from raising or spending non-federal funds at all, thus mooted the allocation question since such committees would have only federal funds. 2 U.S.C. § 441i(a). State party committees were allowed to continue to raise non-federal funds for non-federal races, but could not spend such funds on ads which “promote, support, attack or oppose” federal candidates. § 441i(b)(1); § 431(20)(A)(iii). Voter mobilization activities could be funded by state parties with an allocated mixture of federal funds and specially regulated non-federal funds (deemed “Levin” funds), but limits were placed on the size of these non-federal contributions, and other restrictions were imposed on how such funds could be solicited and what they could be spent for, in order to prevent circumvention of the law. 2 U.S.C. § 441i(b)(2).

In reviewing these provisions aimed at ending the baleful effects of soft money, the Supreme Court in *McConnell* explicitly recognized that the Commission’s allocation rules for political parties had fundamentally undermined the FECA. The Court found that voter mobilization and generic activities plainly benefit federal candidates:

Common sense dictates . . . that a party’s efforts to register voters sympathetic to that party directly assist the party’s candidates for federal office. 251 F.Supp. 2d at 460 (Kollar-Kotelly, J.). It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls. See, *e.g., id.*, at 459.

540 U.S. at 167-68. The Court further said:

Because voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates, the funding of such activities creates a significant risk of actual and apparent corruption.

Id. at 168.

But the Court found that the pre-BCRA system for allocating that spending resulted in circumvention of the law. The FECA “was subverted by the creation of the FEC’s allocation

regime,” *id.* at 142, which allowed party committees “to use vast amounts of soft money in their efforts to elect federal candidates.” *Id.* The rules made possible the virtually unrestricted flow of soft money through the political parties into federal elections, so much so that the Court described these rules as “FEC regulations [that] permitted more than Congress, in enacting FECA, had ever intended.” *Id.* at n.44. The Commission’s allocation rules, the Court stated bluntly, “invited widespread circumvention” of the law. *Id.* at 145. The Court accordingly upheld in their entirety the provisions of BCRA that ended party committee allocation, rejecting any argument that the allocation regime had been constitutionally compelled. *Id.* at 186-89 (rejecting claims based on the Elections Clause, the Tenth Amendment and the Due Process Clause).⁷

3. *ACT and allocation in the 2004 campaign.* Although the Court in *McConnell* addressed the operation of the allocation rules for party committees, its conclusion that allocation as a regulatory mechanism “subverted” the law and “invited widespread circumvention” is equally applicable to the prior allocation rule for non-party committees as well.

In particular, the “funds expended” allocation method devised in the 1990 rulemaking allowed non-party committees to massively circumvent the FECA by structuring their activities so that the federal portion of their allocated spending could be calculated at zero or close to zero

⁷ The Court also recognized that measures taken to avoid circumvention of the law themselves serve compelling governmental purposes: “[B]ecause the First Amendment does not require Congress to ignore the fact that ‘candidates, donors, and parties test the limits of the current law,’ *Colorado II*, 533 U.S. at 457, these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits. (‘[A]ll Members of the Court agree that circumvention is a valid theory of corruption’).” *McConnell*, 540 U.S. at 144, quoting *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001). Similarly, in *Cal. Med. Ass’n. v. FEC*, 453 U.S. 182, 197-98 (1981), the Court upheld the limit on contributions to multi-candidate political committees, 2 U.S.C. § 441a(a)(1)(C), in order “to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*.”

– even if the committee’s spending was almost entirely directed at influencing the outcome of a federal election. Because the “funds expended” allocation method imposed no minimum federal allocation percentage, the rule permitted non-party political committees to engage in an even more egregious soft money abuse than the Court in *McConnell* found the party allocation rules had permitted.

This manipulation could take place because of how the “funds expended” formula worked. The percentage of federal funds required to pay for a committee’s generic activity and administrative costs was entirely based on the committee’s *candidate-specific* disbursements. The formula compared the amount of a committee’s federal candidate-specific expenditures to the committee’s total candidate-specific disbursements (not including overhead or other generic costs). The resulting ratio was then used as the federal percentage for that committee’s *non-candidate-specific* spending, i.e., for administrative costs and generic activities. And unlike for party committees, no minimum federal percentage was imposed. 11 C.F.R. § 106.6 (2002).

This allocation approach could readily be manipulated in order to work absurd results. For instance, if a non-connected political committee made a single small disbursement on behalf of a specific nonfederal candidate, but did not undertake any expenditures on behalf of specific federal candidates, this “funds expended” allocation formula would put zero in the numerator of the fraction, and thus calculate a zero federal allocation requirement. This would permit the committee to pay for a generic partisan voter drive – even one intended to elect a presidential candidate – *entirely* with soft money, since the committee would have no expenditures “on behalf of specific federal candidates.” In the Commission’s view, this would be true even if the sole and explicit purpose of the committee and its donors was to elect a presidential candidate.

After BCRA shut down the flow of soft money through party committees into federal elections, effective the day after the 2002 election, this kind of allocation manipulation by non-party committees quickly became more than a theoretical matter.

Although this case was brought by Emily's List, it is impossible to understand the context of this case, and the background to the issuance of the rule challenged here, without a discussion of the activities conducted by ACT under the prior allocation rule.

In mid-2003, ACT was organized as a federal political committee, for the overriding purpose of engaging in massive generic voter mobilization activities to elect the Democratic presidential nominee.⁸ But the committee carefully avoided all but a minimal amount of federal candidate-specific activity. Because it was doing little such activity, it filed reports with the FEC claiming an allocation ratio, calculated under the "funds expended" method, of 2% federal and 98% nonfederal. It then applied this ratio to all of its generic spending, as well as to its administrative and overhead expenses. Since ACT was doing almost nothing other than generic voter drive activity on behalf of the Democratic presidential nominee, virtually all of its spending was funded as allocated activity, and virtually all of that spending – 98 percent – was funded out of its nonfederal account with soft money.⁹

⁸ This discussion of ACT is drawn from submissions and materials that were discussed in comments submitted in the underlying rulemaking by the organizational *amici* here. See Comments of Democracy 21 et al., *supra* n.5, incorporating Comments by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics on AOR 2004-5 (Feb. 12, 2004), which can be found on the FEC website, at <http://www.fec.gov/aos/2004/aor2004-05com2.pdf>.

⁹ We attach as Exhibit A the allocation schedules, Forms H-1 and H-2, submitted by ACT as part of its public disclosure reports filed with the FEC in 2003 and 2004. These reports, with one exception, all show an allocation ratio of 98 percent non-federal and 2 percent federal. These reports are available online at the Commission's website, at <http://query.nictusa.com/cgi-bin/fecimg/?C00388876>. (In its 2004 Post General Report, ACT modified its allocation ratio to 88 percent non-federal, 12 percent federal, but reverted to the 98-2 split in the 2004 Year End Report.)

But ACT was plainly and publicly engaged in these voter mobilization activities in order to defeat President Bush, and to elect the Democratic nominee. That overriding federal purpose was made clear by its founders, its funders, and its public communications.

According to a report in *The Washington Post* about the formation of ACT, its president, Ellen Malcolm, said that ACT would conduct “a massive get-out-the-vote operation that we think will defeat George W. Bush in 2004.”¹⁰ This overriding purpose was confirmed by ACT’s direct mail fundraising solicitation materials. For one such solicitation, signed by ACT president Malcolm, the outside of a large envelope in which the solicitation was mailed stated:

17 States;

25,000 Organizers;

200,000 Volunteers,

10 Million Doors Knocked On

. . . and a one-way ticket back to Crawford, Texas¹¹

The solicitation letter itself is focused on the presidential election:

[I]f we can count on your personal support and active participation, 2004 will be a year of America Coming Together and George W. Bush going home

In communities all across America, people are hurting because Bush’s mindless devotion to tax cuts for the wealthy is making a shambles of our economy. Bush has turned record budget surpluses into record deficits in no time flat.

He has worked to undermine a woman’s right to choose. His reckless disregard for the environment has eroded decades of progress. He’s set timber companies

¹⁰ Thomas Edsall, *Liberals Form Fund to Defeat President; Aim is to Spend \$75 Million for 2004*, THE WASHINGTON POST, Aug. 8, 2003.

¹¹ This solicitation was discussed in comments in the administrative record below. *See supra*, n.8. A copy is attached for the court’s convenience as Exhibit B.

loose on our national forests – and he’s set John Ashcroft loose on our civil liberties.

But, wishing won’t make Bush, Cheney, Ashcroft, DeLay and their extremist agenda go away. People-to-people organizing will – and organizing is what ACT is all about.¹²

A June, 2004 version of the same solicitation also specifically referenced the presidential campaign of Senator Kerry:

We can’t match them dollar-for-dollar. But, we can – and must – match them door-for-door. And in many critical states we’ll be at work in places where the Kerry Campaign and the Democratic Party simply don’t have the resources to operate.¹³

ACT’s enclosed “Bold Action Plan” confirmed that its focus was on influencing the 2004 presidential campaign. The plan was premised on *all* of ACT’s efforts taking place only in the seventeen “battleground” states that, in ACT’s assessment, would determine the presidential election:

As the 2004 elections approach, Democrats have a firm grasp on 168 electoral votes. They’re in states that the Democratic candidate is almost guaranteed to win. President Bush, on the other hand, seems an almost certain winner in states that add up to 180 votes.

That leaves seventeen states with 180 electoral votes as the competitive battleground in this election

¹² Exhibit B, Solicitation Letter at 1-2.

¹³ Solicitation Letter at 1. A copy of the full letter is attached for the court’s convenience as Exhibit C. Although this letter was sent after the close of the public comment period in the underlying rulemaking, it is an outgrowth of the same material that was discussed in the administrative record. This letter was submitted to the Commission during the time period in which the rulemaking was pending, and thus was within the knowledge of the Commission, as an attachment to an administrative complaint filed with the Commission by organizational *amici* on June 22, 2004.

Our America Coming Together Action Plan will focus all of our attention in these key states – the ones that will decide in which direction America goes after the 2004 election.¹⁴

According to disclosure reports, ACT spent over \$75 million dollars of soft money on these activities.¹⁵ It received the bulk of its funding from a handful of large donors, most prominently George Soros, who gave \$7.5 million directly to ACT.¹⁶ Soros made clear that this money was given for the purpose of defeating President Bush. Referring expressly to ACT, Soros wrote in an op-ed column in *The Washington Post* that he and others were “contributing millions of dollars to grass-roots organizations engaged in the 2004 presidential election” because they “are deeply concerned with the direction in which the Bush administration is taking the United States and the world.”¹⁷

¹⁴ Ex. B and Ex. C (Action Plan at 1-2) (emphasis added). While ACT carefully noted that these same 17 presidential battleground states would also “be the home of dozens of key...state and local races as well,” *id.* at 2, the fact that ACT had no apparent interest in “key” state or local races outside of the 17 presidential battleground states confirms what is stated in its various solicitation materials – that its overriding focus was on the presidential race.

¹⁵ A compilation of its disclosure reports by the Center for Responsive Politics shows that ACT spent a total of \$76,270,931. See <http://www.opensecrets.org/527s/527cmtes.asp?level=C&cycle=2004>.

¹⁶ A list of the donors to ACT can be found on the website of the Center for Responsive Politics, at <http://www.opensecrets.org/527s/527cmtdetail.asp?ein=200094706&cycle=2004&format=&tname=America+Coming+Together>. It shows that Soros was the largest individual donor directly to ACT. Soros also gave over \$12 million dollars to a section 527 group, “Joint Victory Campaign 2004,” which in turn donated \$18.3 million to ACT. *Id.* In total, Soros gave \$23.5 million to section 527 groups in the 2004 election cycle. See <http://www.opensecrets.org/527s/527contribs.asp?cycle=2004>.

Other large donors to ACT include the Service Employees International Union (SEIU), which gave \$4 million, InterService Corp., which gave \$3 million, and businessman Peter Lewis, who gave almost \$3 million. (Lewis gave an additional \$16 million to “Joint Victory Campaign 2004,” and a total of \$22.4 million to all 527 groups in the 2004 cycle). ACT received \$52 million, or about two-thirds of its total receipts of about \$78 million, from a group of just 14 donors, who each gave \$1 million or more. See ACT donor list, at <http://www.opensecrets.org/527s/527cmtdetail.asp?ein=200094706&cycle=2004&format=&tname=America+Coming+Together>.

¹⁷ George Soros, *Why I Gave*, THE WASHINGTON POST, Dec. 5, 2003.

Another article describes Soros meeting “with half a dozen top Democratic political strategists” in an effort “to try to figure out how he could help bring down [President] Bush . . .

.”¹⁸ Following this meeting, Soros:

agreed to lead several other major donors in what Democrats hope will be \$75 million in spending section on a grass-roots get-out-the-vote effort in 17 battleground states. Called America Coming Together, it’s directed by top Democratic fundraisers Steve Rosenthal and Ellen Malcolm. That makes Soros a key player in the huge ‘soft money’ push that the Democrats . . . hope will be one of the keys to matching Bush’s formidable fundraising apparatus in the 2004 election.

Id.

B. The 2004 Rulemaking

The fact that ACT in early 2004 was claiming a right to fund its activities with 98 percent soft money under the existing allocation rule was an important backdrop for the FEC’s rulemaking.¹⁹ So also were published reports at the same time that other Democratic groups such as The Media Fund, operating under section 527 of the tax code, were intending to spend massive amounts of soft money on broadcast ads to defeat President Bush. The Media Fund took the position it could engage in this activity without registering as a federal political committee.

¹⁸ Mark Gimein, *George Soros Is Mad As Hell*, FORTUNE, Oct. 27, 2003.

¹⁹ The organizational *amici* filed two administrative complaints with the FEC against ACT, the first in January, 2004 and the second in June, 2004, and argued in those complaints that ACT should not be allowed to allocate at all. Where, among other things, a political committee’s major donors have given funds for the stated purpose of defeating a presidential candidate, where the committee’s announced intentions are to target its activities *only* to those states it identifies as presidential battleground states, and where the only candidates named in its fundraising appeals are federal candidates, such as is the case with ACT, allocation should not be permitted because the committee as a whole has an overriding purpose to influence federal elections. The Commission to date has taken no publicly disclosed action on either complaint.

A political committee organized by operatives associated with the Republicans, Americans for a Better Campaign (ABC), submitted an advisory opinion request to the FEC in late 2003, seeking clarification of the law in these areas. In February, 2004, the Commission issued a narrowly crafted response to the questions posed, Ad. Op. 2003-37,²⁰ but also announced that it would undertake a rulemaking on these same issues, because of their scope and significance.

As the same time, the organizational *amici* wrote to the Commission and urged it to deal with the allocation issue in its planned rulemaking:

Democracy 21, the Campaign Legal Center and the Center for Responsive Politics jointly request the Federal Election Commission to adopt new rules on the allocation formula for non-connected political committees. It is essential for the Commission to take this action as part of the expedited rulemaking process the Commission plans to initiate shortly with the publication of a Notice of Proposed Rulemaking regarding political committees and section 527 organizations.

Recent events have only served to confirm that the Commission's existing allocation rules in Part 106 of its regulations are fundamentally flawed, and do not properly implement the meaning and language of the Federal Election Campaign Act. These events also demonstrate why it is essential for the FEC to act in this area on an expedited basis in order to prevent the current regulations from being used to improperly channel soft money into the 2004 federal elections.²¹

²⁰ In this advisory opinion, the Commission held that a public communication that "promotes, supports, attacks or opposes" a federal candidate is "for the purpose of influencing a Federal election" when made by a [registered federal] political committee," and must accordingly be funded entirely with hard money. Ad. Op. 2003-37, at 10. The Commission also held that generic voter drive activities that do not mention a clearly identified federal candidate are subject to allocation under its section 106.6 rule. *Id.* at 13. (In the Explanation and Justification issued in November, 2004 on the rules challenged here, the Commission said that this advisory opinion was "superseded" by the Commission's new rules. 69 Fed.Reg. 68,063 (Nov. 23, 2004)).

²¹ Letter of February 25, 2004 to FEC Commissioners from Democracy 21, the Campaign Legal Center and the Center for Responsive Politics at 1 (footnotes omitted). A copy of the letter is in the rulemaking record and can be found on the Commission's website, at http://www.fec.gov/pdf/nprm/political_comm_status/exparte_commissioners.pdf.

The *amici* called the Commission's attention to the manipulation of the allocation rules that was being undertaken by ACT:

Thus, ACT is currently claiming a right to pay for its partisan generic voter mobilization activity with 98 percent soft money funding, despite the fact that ACT and its donors have made publicly clear that its overriding purpose is to spend money to mobilize voters to defeat President Bush in the 2004 elections, as we have previously demonstrated.

ACT's position illustrates the fundamental flaw in the Commission's existing Part 106 regulations – a flaw that currently licenses a blatant charade. Simply put, the existing regulations completely fail to protect against the improper flow of soft money into federal elections through partisan voter mobilization activities of section 527 groups. Instead, the regulations authorize easy manipulation of the allocation ratio in order to set the soft money percentage at a fictional and absurdly high level.²²

The Commission published its Notice of Proposed Rulemaking (NPRM) on March 11, 2004. "Political Committee Status," 69 Fed.Reg. 11,736 (March 11, 2004). The NPRM, in part, addressed the allocation issue. It sought general comment on "whether either BCRA or *McConnell* requires, permits, or prohibits changes to the allocation regulations for separate segregated funds and nonconnected committees." *Id.* at 11,753. It raised the fundamental question of whether the Commission should permit allocation at all:

Given *McConnell's* criticism of the Commission's prior allocation rules for political parties, is it appropriate for the regulations to allow political committees to have non-Federal accounts and to allocate their disbursements between the Federal and non-Federal accounts? If an organization's major purpose is to influence Federal elections, should the organization be required to pay for all of its disbursements out of Federal funds and therefore be prohibited from allocating any of its disbursements?

Id.

The NPRM presented various alternative proposals for comment and consideration. One of the proposals was that the "funds expended" allocation method be modified so that the federal

²² *Id.* at 2.

“numerator” would include not just “expenditures” for specific federal candidates, but also those disbursements that “promote, support, attack or oppose” a federal candidate. *Id.* at 11,754-55. And importantly, it specifically proposed setting a minimum level of federal funds for allocated spending by non-party political committees, and set forth three alternative versions of what the federal minimum should be, depending on whether the committee operated in one state, or more than one state. *Id.* at 11,759-60; 11 C.F.R. § 106.6(c)(ii)(A), (B) (Alternatives 3-A, 3-B) (proposed).

In doing so, the NPRM specifically raised the question – and invited comment – on whether a 50 percent minimum federal percentage should be imposed on some or all political committees:

The Commission is considering other minimum Federal percentages as alternatives to those presented in the proposed rules. . . . Should the Commission adopt a fixed minimum Federal percentage? Should it select a higher minimum for committees that conduct activities in several States? *For example, the allocation rule could specify that nonconnected committees and separate segregated funds that conduct activities in fewer than 10 States must use a minimum Federal percentage of 25 percent, while those that do so in 10 or more States would face a minimum Federal percentage of 50 percent. . . . [T]he 50 percent figure was chosen to reflect the broader scope of activities and as a slight reduction to the 60 percent or 65 percent applicable to national party committees under previous 11 C.F.R. 106.5(b)(2), prior to its sunset on December 31, 2002. . . . If the final rule should take such an approach, what should the minimum Federal percentages be?*

69 Fed. Reg. 11,754 (emphasis added).

This put Emily’s List, and all other interested parties, on notice that a 50 percent minimum allocation was under consideration by the Commission. The NPRM specifically raised the question of whether a political committee that operates in ten or more states should be subject to a minimum 50 percent Federal percentage for its allocated activities. Emily’s List

operates in ten or more states,²³ and thus was on notice that that it might be subject to a 50 percent rule.

Emily's List did not file comments in response to the NPRM, nor did it testify during the two-day public hearing held in this rulemaking.²⁴ But other groups, including *amici* and ACT, filed comments specifically addressing the issue of establishing a 50 percent minimum federal allocation.

Over 100,000 comments were filed on the NPRM. Almost all of these comments were focused not on the proposed allocation rules, but on the impact that other parts of the NPRM might have on section 501(c) non-profit groups.²⁵

As soon as the NPRM was released, the organizational *amici* warned the Commission that the expansively defined scope of the rulemaking threatened to paralyze it. In a letter to the Commissioners dated March 16, 2004, these *amici* called on the Commission to bifurcate the rulemaking, and to focus initially only on the two issues of greatest urgency for the rapidly approaching 2004 election – the allocation issue and the problem of section 527 groups:

²³ On its website, Emily's List lists 28 states in which it claims to have helped elect candidates to the U.S. House and Senate. See <http://www.emilyslist.org/candidates/women-helped.html>

²⁴ The comment period for the rulemaking closed on April 9, 2004. See 69 Fed. Reg. 11,736 (Mar. 11, 2004). Emily's List does not claim to have filed timely comments before this date. Instead, it notes that it sent a letter to the Commission on August 17, 2004, objecting to the allocation rules to be considered for final adoption by the Commission two days later. Pl. Mem. at 9. This August letter to the Commission was *more than four months after the close* of the formal comment period in the rulemaking.

²⁵ In addition to dealing with the allocation issue for political committees, and with the question of when a section 527 group has a "major purpose" to influence federal elections and thus has to register as a federal "political committee," the NPRM raised a host of collateral issues about whether and when other kinds of entities, such as nonprofit organizations operating under sections 501(c)(3) and 501(c)(4) of the tax code, would potentially trigger "political committee" status under FECA. This one issue alone proved to be tremendously contentious and was primarily responsible for the overwhelming volume of grassroots email comment that was generated. It had nothing to do with the allocation question.

We fear that otherwise, the current rulemaking proposal is a recipe for failure. The Notice of Proposed Rulemaking adopted by the Commission is so lengthy, addresses so many issues, raises so many questions and proposes so many new rules that the Commission is unlikely to be able to conclude this matter by its mid-May deadline and promulgate new rules for the 2004 general elections.

A failure by the FEC to focus its rulemaking effort on the issues critical for the 2004 elections is likely to result in agency gridlock and inaction.²⁶

The *amici* urged the Commission to act on the allocation issue as one of its two priority matters:

There are two major federal campaign finance law problems that have become manifest in the 2004 election and that should be the focus of the current FEC rulemaking.

First, one or more non-connected political committees are engaged in partisan voter mobilization activities aimed at the general public, and are planning to allocate that spending between their federal and non-federal accounts, pursuant to 11 C.F.R. § 106.6. That regulation allows a committee to calculate its allocation ratio for the use of hard and soft money based on its “ratio of federal expenditures to total federal and non-federal disbursements” over a two-year election cycle. *Id.* at § 106.6(c)(1).

This regulation is contrary to the Federal Election Campaign Act (FECA) and leads to indefensible and absurd results. Under the Commission’s existing Part 106 allocation rules, for example, America Coming Together (ACT) is claiming a right to spend 98 percent soft money on its voter mobilization activities, even though ACT and its donors have made publicly clear their overriding purpose is to mobilize voters to defeat President Bush in the 2004 elections.

The complete inadequacy of the Commission’s existing allocation rules to prevent the kind of absurd result that has occurred with ACT is a question of immediate and urgent importance in the rulemaking. The question is raised in the Notice of Proposed Rulemaking, see Notice at §§ V(C) (“Minimum Federal percentage”) and D (“Clarifying the ratio in the ‘funds expended’ method), and should be segregated and resolved on the expedited track that the Commission has set for the rulemaking.

²⁶ Letter of March 16, 2004 to FEC Commissioners from Democracy 21, the Campaign Legal Center and the Center for Responsive Politics at 2 (footnotes omitted). A copy of the letter is in the rulemaking record and can be found on the Commission’s website, at http://www.fec.gov/pdf/nprm/political_comm_status/mailed/democracy21_wertheimer_2.pdf.

Id. at 2-3.

Although most of the comment and controversy in the rulemaking concerned whether and how to apply a “major purpose” test for political committee status to non-profit organizations, comments were filed on the proposed allocation rules by ACT, The Media Fund, the congressional *amici*, the organizational *amici*, and others, even though Emily’s List did not itself take advantage of the opportunity to do so. The *amici* organizations supported the proposal for a 50 percent minimum federal allocation,²⁷ as did *amici* Congressional sponsors.²⁸ Other campaign finance groups, such as Public Citizen²⁹ and the League of Women Voters,³⁰ also filed comments supporting changes to the allocation rules.

Not surprisingly, there was opposition as well. ACT, the principal beneficiary of the allocation loophole in the 2004 election, filed written comments opposing all proposed changes to the allocation rules, and specifically criticized the proposal for “a minimum federal percentage for non-connected PACs” as “arbitrary and unsupported by law.”³¹ So too did The Media Fund,

²⁷ See Comments of Democracy 21 *et al.*, *supra* n.5 at 3, 14-20.

²⁸ See Comments of Senator John McCain, *et al.*, *supra* n.4, at 3.

²⁹ Comments of Public Citizen, “Political committee status” [NPRM 2004-06] (April 5, 2004), which can be found on the Commission website, at http://www.fec.gov/pdf/nprm/political_comm_status/public_citizen_holman.pdf.

³⁰ Comments of the League of Women Voters Urging Regulation of Soft Money by Section 527 Organizations (April 7, 2004).

³¹ Comments of America Coming Together (April 5, 2004) at 35, which can be found on the Commission website at: http://www.fec.gov/pdf/nprm/political_comm_status/america_coming_tghr_svoboda..pdf.

which called the proposed use of minimum federal percentages a step that would make allocation “more complicated and burdensome.”³²

There was also extensive discussion of the proposed changes to the allocation rules during the two-day public hearing on the NPRM in April, 2004.³³

The Commission had originally set May, 2004 as a target to complete the rulemaking, in order to enact rules changes that could impact ongoing abuses in the 2004 election. In mid-May, however, the general counsel recommended that the agency “continue work on this rulemaking, but take additional time before issuing final regulations.”³⁴ The Commission agreed, and deferred action for 90 days.³⁵

³² Comments of The Media Fund (April 5, 2004) at 20, which can be found on the Commission website at: http://www.fec.gov/pdf/nprm/political_comm_status/media_fund_utrecht.pdf.

³³ See FEC, Transcript from April 14, 2004 Public Hearing on Political Committee Status Notice of Proposed Rulemaking; Testimony of Mr. Laurence Gold, Associate General Council of the AFL-CIO, pp. 43, 114-117; Testimony of Mr. Donald Simon, Counsel to Democracy 21, pp. 47-48, 87; Testimony of Mr. Craig Holman, Public Citizen, pp. 158-61. See also FEC, Transcript from April 15, 2004 Public Hearing on Political Committee Status Notice of Proposed Rulemaking; Testimony of Mr. Lawrence Noble, Executive Director of the Center for Responsive Politics, pp. 27, 78-80; Testimony of Mr. Robert F. Bauer, Perkins Coie LLP on behalf of America Coming Together, pp. 81-84; Testimony of Ms. Lyn Utrecht, Ryan, Phillips, Utrecht and MacKinnon on behalf of Media Fund, pp. 183-86.

³⁴ Agenda Document 04-48 (May 11, 2004), at 5 (available at <http://www.fec.gov/agenda/2004/mtgdoc04-48.pdf>)

³⁵ As a practical matter, this ensured that the ongoing soft money abuses in the 2004 election would continue. Republican operatives, who until this point had generally avoided the use of section 527 groups as vehicles for spending soft money to influence the 2004 federal elections, announced that they would immediately form such groups to do so. In the next few weeks, Republican-leaning section 527 groups such as Swift Boat Veterans for Truth and Progress for America Voter Fund were quickly organized and began to raise and spend soft money on broadcast ads attacking Senator Kerry, the Democratic presidential nominee, and promoting President Bush. While Republican-leaning 527 groups started late in the 2004 election cycle, they ended up raising and spending tens of millions of dollars of soft money to influence the 2004 election. See Michael Janofsky, *Advocacy Groups Spent Record Amount on 2004 Election*, THE NEW YORK TIMES, Dec. 17, 2004 (“By May, when the commission said it would do nothing to change the rules, Republican 527’s had spent just \$237,000 on the presidential race, compared with \$73 million by Democratic 527’s. At that point, however, Republican groups rebounded (footnote continued)

In August, the Commission met to consider the general counsel's recommendations for final action. The general counsel proposed that the Commission adopt new rules that embodied four key proposals: (1) a codified definition of the "major purpose" test for "political committee" status, with special treatment of section 527 groups; (2) an expanded definition of the statutory term "expenditure" to include ads that promote, support, attack or oppose federal candidates, (3) a clarified definition of the statutory term "contribution" to include funds received in response to solicitations that indicate the funds will be used to promote or oppose federal candidates, and (4) revisions to the allocation rules for non-party political committees.³⁶

As to the last, the general counsel proposed replacing the "funds expended" allocation method with a 50 percent federal minimum percentage that would be applied to generic activities and administrative costs. The general counsel's allocation proposal also addressed spending for a "public communication" that refers to specific Federal or non-Federal candidates, or political parties.³⁷ Where such a communication refers only to Federal candidates, the proposal stated that it needed to be funded entirely with Federal funds; where a communication refers only to non-Federal candidates, it could be funded entirely with non-Federal funds; and where the communication refers to a political party, it would be subject to allocation as a generic activity (and thus would have to be funded with at least 50 percent federal funds). And where the public

quickly, spending \$62 million through the end of the presidential election, as the Democrats spent another \$115 million.")

³⁶ Agenda Document 04-75 (August 19, 2004) (available at <http://www.fec.gov/agenda/2004/mtgdoc04-75.pdf>).

³⁷ "Public communication" is defined by the law as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. 2 U.S.C. § 431(22).

communication refers to both Federal and non-Federal candidates, it would be allocated “based on the proportion of space or time” devoted to the Federal candidates as compared to the non-Federal candidates, and funded accordingly.

At its decision-making meeting, the general counsel’s four-part proposal was rejected by a vote of 2-4.³⁸ The latter two portions of the general counsel’s proposal – the clarified definition of “contribution” and the modifications to the allocation system – were severed and moved separately. This motion passed by a vote of 4-2.

The Commission met again on October 28, 2004 to approve an Explanation and Justification (“E&J”) for the two new rules. Final publication of the rules was made on November 23, 2004, approximately two weeks after the 2004 election. “Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees,” 69 Fed. Reg. 68,056 (Nov. 23, 2004).

While the final E&J noted that “little attention” was focused on the allocation issues during the public comment period, *id.* at 68,061, this description was made only in relative terms. Almost all of the 100,000 comments received in the rulemaking dealt with the impact of the proposed regulations on section 501(c) non-profit groups, not with the allocation issue. But as noted above, ACT – the group that would be most affected by the allocation regulation – submitted comments on these rules, as did a related 527 organization, The Media Fund. The principal sponsors of BCRA commented, as did a number of campaign finance groups. And as noted earlier, these rules were the subject of extensive discussion during the Commission hearings on the rules.

³⁸ The minutes of this meeting are available on the Commission’s website, at <http://www.fec.gov/agenda/2004/approve04-77.pdf>.

While the new rules are targeted to end a manipulation that proved to be a clear abuse during the 2004 cycle, such manipulation of the “funds expended” method had not previously been a common practice.³⁹ As the Supreme Court noted in *McConnell*, however, “the entire history of campaign finance regulation” teaches “the hard lesson of circumvention.” 540 U.S. at 165. It is clear that this technique for manipulating the allocation rules would have grown as a means of circumvention if the rule had not been changed to limit it.

The two new rules adopted by the Commission took effect on January 1, 2005. This lawsuit and motion for a preliminary injunction followed.

IV. The Motion for a Preliminary Injunction Should Be Denied.

A party seeking a preliminary injunction bears the burden of meeting a four-part test:

1. Whether the plaintiff has a substantial likelihood of success on the merits.
2. Whether the plaintiff would suffer irreparable injury were an injunction not granted.
3. Whether an injunction would substantially injure other interested parties;
4. Whether the grant of an injunction would further the public interest.

Al Fayed v. CIA, 254 F.3d 300, 303 (D.C. Cir. 2001); *Serono Labs, Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998). The request for a preliminary injunction made by Emily’s List fails under each of these factors.

³⁹ As the E&J noted, “most” committees did not allocate under the “funds expended” method at all. 69 Fed. Reg. at 68,062. Any committee not allocating “was presumably already using 100% Federal funds” for generic and administrative expenses, and therefore would not be adversely affected by the new 50 percent rule. *Id.*

A. Plaintiff Cannot Demonstrate a Substantial Likelihood of Success on the Merits.

1. The allocation rules.

Emily’s List attacks the allocation rules on two substantive grounds: it argues that a flat allocation percentage is arbitrary because it lacks any proportional relationship to a committee’s federal spending, and it argues that the requirement to allocate spending for ads that merely “refer” to a Federal candidate is burdensome and in excess of the Commission’s statutory authority. Neither argument is valid.⁴⁰

a. Plaintiff has no entitlement to the “funds expended” allocation rule.

The “major purpose” of Emily’s List is to influence elections.

That conclusion necessarily follows from the fact that Emily’s List is a registered federal political committee. In *Buckley v. Valeo*, 424 U.S. 1 (1976) the Supreme Court construed the statutory term “political committee,” 2 U.S.C. § 431(4), to “only encompass organizations that are under the control of a candidate *or the major purpose of which is the nomination or election of a candidate.*” *Id.* at 79 (emphasis added).

The underlying fallacy of plaintiff’s merits argument is its apparent assumption that the previous “funds expended” allocation method was statutorily *required*. It plainly was not: as a

⁴⁰ Plaintiff also devotes much energy to arguing that the final allocation rules violate the APA “notice” requirement because they were not adequately foreseeable as a “logical outgrowth” of the NPRM. Pl. Mem. at 20-29. *Amici* will not brief this point, other than to note that, as the description of the rulemaking set forth above makes clear, the NPRM specifically proposed a minimum federal percentage for non-party committee allocation, explicitly sought comment on whether there should be a 50 percent minimum federal allocation, 69 Fed. Reg. at 11,754, and received comments on this matter from a number of interested parties. Emily’s List chose not to comment on this proposal in the course of the rulemaking, but it should hardly be heard to complain that it did not have notice of it. In fact, since the President of Emily’s List is also the president of ACT, and was so at the time of the rulemaking, and since ACT specifically opposed the 50 percent minimum allocation, it is simply not credible for Emily’s List to argue it did not have notice of this proposal.

federally registered political committee, Emily’s List is not entitled to any particular system of allocation, or indeed, to any system of allocation at all.

This was the conclusion reached by the court in *Common Cause v. FEC*, 692 F. Supp. 1391 (D.D.C. 1987), which held that allocation was not *per se* contrary to the 1979 Amendments to FECA, and thus the Commission had discretion to permit allocation. But the court also said the Commission had the discretion *not* to permit allocation, and instead to require that “mixed” activities be funded entirely with federal funds: “Indeed, it is possible that the Commission may conclude that *no* method of allocation will effectuate the Congressional goal that *all* monies spent by state political committees on those activities permitted in the 1979 amendments be ‘hard money’ under the FECA. That is an issue for the Commission to resolve on remand.” 692 F. Supp. at 1396 (emphasis in original).

The allocation system, thus, is little more than an act of administrative discretion. The FEC could have chosen to have no allocation at all for federal political committees, and to require that federal committees fund their generic or “mixed” activities, as well as their administrative costs, entirely with hard money.

Nothing in FECA mandates allocation for federal political committees.⁴¹ To the contrary, what FECA mandates is that funds spent “for the purpose of influencing” a federal election be subject to the contribution limits, source prohibitions and reporting requirements of the law. 2 U.S.C. § 431(9). It would certainly be a permissible interpretation of the statute for the Commission to conclude that when a federal political committee spends funds on “mixed” or generic activities, such as voter mobilization drives – where such activities clearly have an

⁴¹ The only exception to this, and the only mention of allocation in FECA, is the recently enacted provision of BCRA that permits state party committees to spend “Levin” funds on an allocated basis for certain voter drive activities. 2 U.S.C. § 441i(b)(2).

impact on federal elections, even if only in part – that such spending is “for the purpose of influencing” federal elections and accordingly should be funded exclusively with federal funds. Indeed, as recounted above, the Commission did take this position in the 1970’s, if only for a brief time, with regard to state party committees. *See* Informational Letter 1976-72, *supra*, p. 7.

McConnell makes clear that the allocation system was a means for widespread circumvention of the law, not a statutory mandate. The Court noted, with justified skepticism, the FEC’s decision to permit party committees to allocate at all:

Shortly after *Buckley* was decided, questions arose concerning the treatment of contributions intended to influence both federal and state elections. Although a literal reading of FECA’s definition of “contribution” would have required such activities to be funded with hard money, the FEC ruled that political parties could fund mixed-purpose activities – including get-out-the-vote drives and generic party advertising – in part with soft money.

540 U.S. at 123. The Court upheld Congress’ decision to abolish allocation entirely for national party committees – in large part because it found that FECA “was subverted by the creation of the FEC’s allocation regime,” which enabled party committees “to use vast amounts of soft money in their efforts to elect federal candidates.” *Id.* at 142. If allocation as created by the FEC actually *subverts* FECA, it certainly cannot be a regulatory mechanism that is *required* by FECA.

b. The 50 percent Federal allocation rule for federal political committees is not arbitrary or capricious for lack of “proportionality.”

The Commission had strong grounds to end the “funds expended” method of allocation, and to provide for a minimum federal percentage for allocated spending.

There was strong evidence that its existing “funds expended” allocation method was being manipulated on a massive scale, such that at least one federal political committee was claiming it could use tens of millions of dollars of soft money for the avowed purpose of influencing the 2004 presidential election. While the Commission is certainly subject to

criticism for failing to take action to stop this abuse in time for the 2004 election, it was entirely proper for the Commission to take action, at least prospectively, to prevent the same abuse from recurring.

The Commission's new rule is not a perfect safeguard, but it will substantially limit the kind of circumvention of the law that ACT engaged in. It will prevent a federal committee from calculating a near-zero federal allocation ratio by the simple expedient of eschewing all candidate-specific federal activity, as it could under the former rule. And it will thus prevent a federal committee from spending almost exclusively soft money funds for generic activities and voter mobilization drives that are for the purpose, and have the effect, of influencing federal elections. By requiring all non-party committees to spend "at least" 50 percent federal funds for their generic and voter drive activities, 11 C.F.R. § 106.6(c) (2005), the new rule partially repairs the fundamental flaw that was exposed in the prior "funds expended" method.

It is the Commission's *prior* rule that was arbitrary and irrational and, as was clearly demonstrated, subject to blatant abuse. For the Commission to replace it with a 50 percent federal minimum allocation appropriately establishes a federal floor under the spending of a federal committee. As the Commission correctly explained in its E&J:

These committees have registered as Federal political committees with the FEC; consistent with that status, political committees should not be permitted to pay for administrative expenses, generic voter drives and public communications that refer to a political party with a greater amount of non-Federal funds than Federal funds.

69 Fed. Reg. 68,062 (Nov. 23, 2004). Furthermore, since the FEC could have required 100 percent federal funds to be spent, as found by this court in the *Common Cause* case, a rule requiring a minimum of 50 percent federal funding is a more modest approach to solving the problem.

Plaintiff complains that the new rule is an unreasonable “one size fits all” approach, Pl. Mem. at 33, that lacks “proportionality,” *id.* at 17, because the 50 percent requirement for funding administrative costs and generic activities may not relate well, or even at all, to the federal proportion of a committee’s candidate-specific activities. *Id.* (federal share under the prior rule was “in proportion to [a committee’s] actual financial commitment to federal elections”).⁴²

But the supposed “proportionality” that plaintiff commends in the old rule was itself no more than a regulatory illusion. The ratio of a committee’s candidate-specific spending may, or may not, relate at all to the entirely separate issue of whether the committee’s generic voter mobilization activities are for the purpose of influencing federal elections. A committee could choose to run candidate-specific ads only about gubernatorial contests in Idaho and West Virginia, while also deciding to spend heavily on generic voter drive activity to influence the presidential race in Ohio and Florida. The committee’s candidate-specific activity in some states says nothing about the purpose of its voter drive activity in others.

⁴² Emily’s List postulates the unlikely scenario that “[i]f” it supports “just one federal candidate or allocates just one percent of its total budget to the entire class of federal candidates supported in an election cycle,” it must still pay its administrative expenses with 50 percent federal funds. Pl. Mem. at 17. This is, of course, simply hypothetical, since Emily’s List does not argue that this trivial spending on federal campaigns is what its *actual* level of federal spending has been or will be. In fact, Emily’s List has chosen to allocate spending in each of the past five years with a 50 percent federal spending allocation. *See* p. 40 *infra*. Emily’s List describes itself as having “helped to elect” *sixty* Democratic women to Congress and *eleven* to the United States Senate. Pl. Mem. at 5.

The series of other hypothetical scenarios also posed by plaintiff – such as “a multi-million-dollar state political committee that spends \$1,000.01 on a billboard supporting a federal candidate as its only federal activity,” Pl. Mem. at 18 – also remain just that – hypothetical. No such committee took the opportunity to object to the proposed rule on this basis during the rulemaking. And it would be the odd state committee that found itself in the position of having to pay half of all its administrative expenses with federal funds solely on this basis. Such a state committee would presumably segregate its multi-million dollar nonfederal activity in a nonfederal committee, and set up an entirely separate federal committee, registered with the FEC, to pay for the single billboard supporting a federal candidate.

Yet under the old “funds expended” method, it was simply *assumed* that the ratio of spending for the latter should be determined by the ratio of spending for the former. The old rule would have calculated the committee’s federal allocation ratio based only on its spending in the governor races in Idaho and West Virginia – and thus conclude its federal ratio would be zero. The committee would then claim a right to fund its voter drive activity in Ohio and Florida entirely with soft money, notwithstanding its avowed purpose to influence the presidential race in those battleground states.

The graphic real-life example of this is, of course, ACT. The fact that only 2 percent of ACT’s *candidate-specific* spending was federally oriented had no meaningful correlation to the purpose and effect of its generic and voter mobilization spending, which was overwhelmingly for a federal purpose – to influence the 2004 presidential election. In enabling ACT to fund tens of millions of dollars of that activity with only 2 percent federal funds, the prior rule fostered a superficial “proportionality” that was a falsehood.

c. *It is reasonable to require federal committees to use federal funds for ads that “refer” to federal candidates.*

As discussed above, the Commission also modified the allocation rule for candidate-specific spending by a non-party political committee – spending that refers to one or more clearly identified candidates, whether federal or non-federal, or both. The new rule is based on simple and intuitive propositions: spending that refers exclusively to federal candidates has to be funded exclusively with federal funds; spending that refers exclusively to non-federal candidates can be funded exclusively with non-federal funds, and spending that refers to both federal and non-federal candidates can be funded with a mixture of federal and non-federal funds allocated on the basis of the “proportion of space or time” devoted to each in the public communication.

11 C.F.R. § 106.6(f)(3)(i) (2005). There is no minimum federal percentage required by this provision.

Emily's List attacks this rule on two grounds. The first claim is that an allocation rule based on a "reference" to a candidate is overbroad and beyond the Commission's statutory authority. Pl. Mem. at 12-14. Yet this allocation rule applies to federal political committees – groups whose "major purpose," by definition, is to influence elections. When such a group "refers" in a public communication to a clearly identified federal candidate running in an election, it is hardly a novel idea to suppose the political committee is trying to influence the election of that candidate.

The new rule has the added advantage of providing a "bright line" test that is easily understood by political committees and easily administered by the Commission. Congress adopted a similar "refers to a clearly identified candidate" test in enacting Title II of BCRA, which defines and regulates "electioneering communications." 2 U.S.C. § 434(f)(3).⁴³ But because Title II applies to "any person" who spends money for an "electioneering communication" – including individuals, corporations, labor unions and other entities which are not in the business of influencing elections – Congress narrowed the scope of the bright line test to encompass only broadcast ads in the proximate pre-election period. Such narrowing is not necessary, however, where the regulation of an ad that "refers to" a candidate falls on a political committee – an entity that *is* in the business of influencing elections. It is reasonable for the Commission to assume that when a political committee spends money to refer to a candidate in a

⁴³ An "electioneering communication" is defined as a broadcast communications that "refers to a clearly identified candidate for Federal office" and that is broadcast to the electorate of that candidate within 30 days of a primary election or 60 days of a general election in which that candidate is running for office. *Id.*

public communication, it is spending that money “for the purpose of influencing” the candidate’s election. As such, and when it is a *federal* candidate who is “referenced” in the ad, the spending by the federal political committee is within the scope of FECA.⁴⁴

Plaintiff’s second attack on the rule is that it will have an unreasonable – even “incapacitating” – impact on Emily’s List. Pl. Mem. at 14. Here, Emily’s List recites no *actual* public communication it has run that “refers to” a federal candidate and for which the new rule would require an unreasonable, excessive or “incapacitating” amount of federal funding. Instead of illustrating its point with any real-life example drawn from its twenty years of experience as a political committee, Emily’s List instead offers only improbable hypotheticals at the outer reaches of the rule – an ad for a state candidate that includes a reference to a federal candidate in the name of legislation (*e.g.*, “McCain-Feingold”), or an ad for a state legislative candidate that mentions an endorsement by a federal candidate. Pl. Mem. at 15-16.

The rule itself provides the best answer to these hypothetical applications. Although plaintiff claims that a “simple reference” to a federal candidate “converts” the communication into activity “subject to significant financing restrictions,” *id.* at 16, this is wrong as it applies to the examples cited. For an ad that “refers to” both federal and non-federal candidates – the hypothetical endorsement ad, for instance – the rule requires only an allocation of federal funding that is “based on the proportion of space or time devoted to each clearly identified Federal candidate as compared to the total space or time devoted to all clearly identified

⁴⁴ Plaintiff argues that because Congress did not alter the allocation rules for non-party committees in BCRA when it did so for party committees, the Commission cannot alter the non-party committee rules either, because Congress’ silence on the matter indicates that it “accepted the longstanding allocation regime set forth in” section 106 for non-party committees. Pl. Mem. at 14. But even plaintiff recognizes this is wrong, and that Congress’ silence on the Commission’s allocation rules “does not necessarily preclude the FEC from adjusting those rules.” *Id.*

candidates.” 11 C.F.R. § 106.6(f)(3)(i) (2005). Thus, if the endorsement ad posited by plaintiff is primarily about the state candidate, and refers only incidentally to the federal candidate’s endorsement, the rule does not require “significant” or “incapacitating” federal funding, but only *proportional* federal funding that reflects the space devoted to the federal candidate. An incidental reference to the federal candidate making the endorsement would thus require only a small amount of federal funding. (The same is true of an ad with an incidental mention of a federal candidate’s name as part of the name of legislation). Conversely, if the federal candidate making the endorsement is prominently featured in the ad, it is reasonable to require a larger federal allocation because the ad may promote the federal candidate’s own campaign as well as that of the non-federal candidate.⁴⁵

In other words, the rule embodies the very proportionality that plaintiff faults the rule on allocation of generic activities for lacking.

2. The solicitation rule.

FECA broadly defines a “contribution” to include any “gift, . . . deposit of money. . . or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). This statutory definition has long been implemented through similarly phrased Commission regulations. *See* 11 C.F.R. §§ 100.51 – 100.56 (2002).

The Commission’s new rule adds a supplementary definition to encompass any gift or donation made “in response to any communication . . . if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate.” § 100.57 (2005).

⁴⁵ Of course, if a state candidate is endorsed in an ad by a federal officeholder who is not a “candidate” in that year’s election, the rule would not require any federal funding.

Emily's List challenges the rule by first mischaracterizing it: plaintiff argues that if it "now refers to a federal candidate in a communication designed to raise monies for its state and local election program, it risks a Commission finding that its communication 'indicates' that some portion of the monies received may be used to 'support or oppose' the federal candidate." Pl. Mem. at 18-19. But the new definition of "contribution" does *not* apply merely because of a solicitation's "reference" to a federal candidate. Rather it applies only if the solicitation refers to a candidate *and also* indicates that the donated funds will be used to support or oppose the referenced candidate. There is no "risk" to Emily's List by merely referring to a federal candidate in a solicitation, unless the language of the solicitation goes beyond that.

Plaintiff next challenges the rule for vagueness, complaining that it does not define the term "indicate," and so its application is "ambiguous," "confusing" and "highly uncertain." *Id.* Of course, the current (and longstanding) statutory definition of "contribution" is phrased quite generally as money donated "for the purpose of influencing" a federal election. The longstanding regulations implementing that broad standard do little more than simply repeat the same general test. If Emily's List has had no problem for twenty years determining whether the funds it has been receiving are "for the purpose of influencing" a federal election, it should have no problem in understanding if its own solicitation letters indicate whether the funds it receives will be used to support or oppose a candidate.

In any event, the operative standard in the new rule is not "indicates," but the "support or oppose" test. And that standard is one that the Supreme Court just upheld in *McConnell*, where it took no more than a footnote to dismiss a void-for-vagueness challenge to a comparable standard that BCRA applies to public communications by state party committees. 540 U.S. at 170, n.64. The words "support" or "oppose," the Court said, "give the person of ordinary

intelligence a reasonable opportunity to know what is prohibited.” *Id.*, quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). The Court said this was “particularly true” in BCRA, “since actions taken by political parties are presumed to be in connection with election campaigns.” *Id.* The same observation applies to federal political committees generally, including Emily’s List, all of which have a “major purpose” to influence elections. And as the Court also said in *McConnell*, if any doubt about the meaning of the standard remains, plaintiff is “able to seek advisory opinions for clarification and thereby ‘remove any doubt there may be as to the meaning of the law.’” *Id.*, quoting *Civil Serv. Comm’n v. Letter Carriers*, 413 U.S. 548, 580 (1973). Again, the same is true here, both about the new rule’s use of the terms “support” and “oppose” as well as its use of the term “indicates.”

Finally, Emily’s List posits two malevolent motives to the new rule that simply do not exist. It says that the rule’s “intended” effect is to “limit the use of ‘references’ to federal candidates” in solicitations for state and local election purposes, “and to impair fundraising messages that discuss federal officeholders who make and execute government policy.” Pl. Mem. at 19. As to the first, it is again based on an mischaracterization of the rule, which does not limit mere “references” to federal candidates, but only references that are accompanied by statements indicating that the funds will be used to support or oppose those federal candidates. And as to the second, Emily’s List does not explain how it “impairs” a fundraising message that solicits funds to support or oppose a federal candidate, when the funds received in response are simply treated as contributions. This treatment is not only consistent with FECA, it is compelled by it. If by “impairment,” plaintiff means having to live under federal contribution limits, source prohibitions and reporting requirements for money it raises for the purpose of supporting or opposing federal candidates, its complaint has been foreclosed since the enactment

of FECA more than 30 years ago, and the Supreme Court's decision in *Buckley* upholding that law.

B. Plaintiff Cannot Demonstrate It Would Suffer Irreparable Harm in the Absence of a Preliminary Injunction

There are three reasons why Emily's List has failed to demonstrate it would suffer irreparable harm in the absence of an immediate preliminary injunction:

First, throughout its recent history, Emily's List has claimed a 50-50 ratio for allocating spending between its federal and non-federal accounts, and has reported that allocation ratio to the Commission.⁴⁶ Thus, plaintiff has long characterized its own activities as embodying precisely the same allocation split that the regulation it challenges now requires. Whatever the case may be for another committee, there is a perfect fit between the new rule and the recent activities of Emily's List. Given the fact that Emily's List has long managed to conduct its activities in conformance with what the new rule requires, and given that there is no evidence Emily's List is changing its activities, there is no need for plaintiff to alter its behavior – or its spending – at all. Under these circumstances, plaintiff has not made a showing that this regulation causes irreparable harm.

Second, compliance with the rules at issue will not cause “irreparable” harm. Emily's List can engage in all of the spending for all of the speech it wishes. This includes spending on generic or voter drive activity for which – even plaintiff concedes – some portion must be funded with federal money. The *only* issue is whether that federal portion is 50 percent or some lower

⁴⁶ In disclosure reports filed by Emily's List for the last five years, it has claimed a 50-50 allocation ratio. We attach as Exhibit D the H-1 and H-2 schedules filed by Emily's List for its Year End report for each of the last five years, as a sample showing its consistent and voluntary claim to this allocation ratio. All of these reports are available on the Commission's website, at <http://query.nictusa.com/cgi-n/dcdev/forms/>.

percentage. But even if the allocation rules required a federal political committee such as Emily's List to use entirely hard money for all of its activities, that would still not constitute irreparable harm. As the Supreme Court said in *Buckley*, "the overall effect of [FECA] contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons." 424 U.S. at 21-22. Emily's List is free to raise and spend all of the federal funds it wishes, and having to raise such funds does not constitute cognizable injury. There is no harm to its speech, irreparable or otherwise, in being required to fund its election-related speech with hard money, much less with just 50 percent hard money.

Finally, there is no irreparable harm because plaintiff can seek to retroactively adjust its allocation mixture of federal and non-federal funds if it prevails on the merits in this case. If a preliminary injunction is denied, and Emily's List complies with the allocation rules during the pendency of this action, it will suffer no harm should the Commission ultimately win the case and the new regulations are sustained. On the other hand, if a preliminary injunction is denied but the allocation rules are ultimately stricken, then Emily's List can seek leave to adjust its federal/non-federal ratio, in order to compensate for the mix of federal and non-federal money it spent during the pendency of this case. In other words, if the regulations are struck down, plaintiff will be able to seek leave to use greater non-federal funds to, in effect, "repay" itself for the federal funds "unnecessarily" spent under invalid rules. Thus, the harm – if any – is easily reparable.

C. An Injunction Would Injure the Public, and the Public Interest.

In the case of a public rule or regulation, the third and fourth standards for the issuance of a preliminary injunction merge – the harm to the "other interested party," a federal agency, is reflective of the harm to the public itself.

The Supreme Court has repeatedly upheld the federal campaign finance laws because they serve the compelling governmental purposes of preventing “both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.” *McConnell*, 540 U.S. at 136, quoting *FEC v. Nat’l Right to Work Comm.*, 459 U.S. 197, 208 (1982); see also *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 440-41 (2001).

These interests are fully implicated by the allocation regulation at issue here. The regulation serves to prevent widespread circumvention of the federal campaign finance laws and, in particular, the contribution limits and source prohibitions they impose on funds donated to federal political committees that are spent for the purpose of influencing federal elections. The Commission had before it powerful evidence that its prior rule resulted in massive circumvention and that, under color of that rule, tens of millions of dollars of soft money was spent to influence the 2004 federal elections.

To enjoin this rule would strongly harm the public and disserve the public interest by permitting the continuation, and potential expansion, of this massive circumvention, thereby undermining the compelling public interest served by the statute.

V. Conclusion

For the above reasons, *amici* submit the motion for a preliminary injunction should be denied.

Respectfully submitted,



Donald J. Simon (Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE
ENDRESON & PERRY, LLP
1425 K Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 682-0240

Counsel for Democracy 21

Trevor Potter (Bar No. 413778)
J. Gerald Hebert (Bar No. 447676)
Paul Ryan
CAMPAIGN LEGAL CENTER
1640 Rhode Island Avenue, N.W.
Suite 650
Washington, D.C. 20036
(202) 736-2200

*Counsel for the Campaign Legal
Center and individual amici*

Lawrence Noble (Bar No. 244434)
CENTER FOR RESPONSIVE
POLITICS
1101 14th Street, N.W.
Suite 1030
Washington, D.C. 20005
(202) 857-0044

Counsel for Center for Responsive Politics

Fred Wertheimer (Bar No. 154211)
DEMOCRACY 21
1825 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 429-2008

*Counsel for Democracy 21
and individual amici*

EXHIBIT A

**AMERICA COMING TOGETHER
H1 & H2 Schedules**

Year End 2003 Report
H1 and H2 Schedule

SCHEDULE H1 (FEC Form 3X)

51 / 757

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full) America Coming Together	
USE ONLY ONE SECTION	
State and Local Party Committees	
Fixed Percentage (select one)	
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)	
<input type="checkbox"/> Presidential and Senate Election Year (38% Federal)	
<input type="checkbox"/> Senate-Only Election Year (21% Federal)	
<input checked="" type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)	
Seperate Segregated Funds and Non-Connected Committees	
Fixed Percentage (select one)	
Estimated Direct Candidates Support – Federal	2.00 %
Estimated Direct Candidates Support – Non-Federal	98.00 %
ADJUSTMENTS TO FUNDS EXPENDED:	
Actual Direct Candidate	
Support -- Federal	0.00 %
Actual Direct Candidate	
Support – Non-Federal	0.00

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

PAGE 52 / 757

NAME OF COMMITTEE (In Full)
America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

ACTIVITY OR EVENT IDENTIFIER	FEDERAL %	NON-FEDERAL %
<p>FRP</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Revised <input type="checkbox"/> Same as Previously Reported</p>	<p>2.00 %</p>	<p>98.00 %</p> <p>Transaction ID: R1</p>

April 2004 Quarterly Report
H1 and H2 Schedule

SCHEDULE H1 (FEC Form 3X)

115 / 2029

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full)	
America Coming Together	
USE ONLY ONE SECTION	
State and Local Party Committees	
Fixed Percentage (select one)	
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)	
<input type="checkbox"/> Presidential and Senate Election Year (38% Federal)	
<input type="checkbox"/> Senate-Only Election Year (21% Federal)	
<input type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)	
Separate Segregated Funds and Non-Connected Committees	
Fixed Percentage (select one)	
Estimated Direct Candidates Support -- Federal	2.00 %
Estimated Direct Candidates Support -- Non-Federal	98.00 %
ADJUSTMENTS TO FUNDS EXPENDED:	
Actual Direct Candidate	
Support -- Federal	0.00 %
Actual Direct Candidate	
Support -- Non-Federal	0.00

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

PAGE 16 / 2028

NAME OF COMMITTEE (In Full)
America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

<p>ACTIVITY OR EVENT IDENTIFIER FRP</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL %</p> <p>2.00 %</p>	<p>NON-FEDERAL %</p> <p>98.00 %</p> <p>Transaction ID: H2-4</p>
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SCHEDULE H1 (FEC Form 3X)

863 / 4868

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full)	
America Coming Together	
USE ONLY ONE SECTION	
State and Local Party Committees	
Fixed Percentage (select one)	
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)	
<input type="checkbox"/> Presidential and Senate Election Year (38% Federal)	
<input type="checkbox"/> Senate-Only Election Year (21% Federal)	
<input type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)	
Separate Segregated Funds and Non-Connected Committees	
Fixed Percentage (select one)	
Estimated Direct Candidates Support – Federal	2.00 %
Estimated Direct Candidates Support – Non-Federal	98.00 %
ADJUSTMENTS TO FUNDS EXPENDED:	
Actual Direct Candidate	
Support -- Federal	0.00 %
Actual Direct Candidate	
Support – Non-Federal	0.00

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

PAGE 664 of 4868

NAME OF COMMITTEE (In Full)
America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

<p>ACTIVITY OR EVENT IDENTIFIER FRP</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL % 2.00 %</p>	<p>NON-FEDERAL % 98.00 %</p> <p>Transaction ID: H2-4</p>
Empty space for activity details		

October 2004 Quarterly Report
H1 and H2 Schedule

SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full) America Coming Together	
USE ONLY ONE SECTION	
State and Local Party Committees	
Fixed Percentage (select one)	
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)	
<input type="checkbox"/> Presidential and Senate Election Year (38% Federal)	
<input type="checkbox"/> Senate-Only Election Year (21% Federal)	
<input type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)	
Separate Segregated Funds and Non-Connected Committees	
Fixed Percentage (select one)	
Estimated Direct Candidates Support -- Federal	2.00 %
Estimated Direct Candidates Support -- Non-Federal	98.00 %
ADJUSTMENTS TO FUNDS EXPENDED:	
Actual Direct Candidate Support -- Federal	
Actual Direct Candidate Support -- Non-Federal	0.00 %
	0.00

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

PK289 / 22852

NAME OF COMMITTEE (In Full)
America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
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<p>ACTIVITY OR EVENT IDENTIFIER FRP</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL %</p> <p>2.00 %</p>	<p>NON-FEDERAL %</p> <p>98.00 %</p> <p>Transaction ID: H2-4</p>
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METHOD OF ALLOCATION FOR:

- SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS
- SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES

NAME OF COMMITTEE (in Full)
America Coming Together

USE ONLY ONE SECTION

State and Local Party Committees

Fixed Percentage (select one)

Presidential-Only Election Year (28% Federal)

Presidential and Senate Election Year (36% Federal)

Senate-Only Election Year (21% Federal)

_____ Non-Presidential and Non-Senate Election Year (15% Federal)

Seperate Segregated Funds and Non-Connected Committees

Fixed Percentage (select one)

Estimated Direct Candidates Support – Federal		2.00	%
---	--	------	---

Estimated Direct Candidates Support – Non-Federal	98.00	%	
---	-------	---	--

ADJUSTMENTS TO FUNDS EXPENDED:

Actual Direct Candidate

Support -- Federal		0.00	%
--------------------------	--	------	---

Actual Direct Candidate

Support – Non-Federal	0.00		
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10/21/04

SCHEDULE H2 (FEC Form 3X)

ALLOCATION RATIOS

PAGE 04 / 2784

NAME OF COMMITTEE (In Full)

America Coming Together

RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT ACTIVITIES APPEARING ON THIS REPORT.

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<p>ACTIVITY OR EVENT IDENTIFIER FRP 10/1/04 -10/13/04</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL % 2.00 %</p>	<p>NON-FEDERAL % 98.00 %</p> <p>Transaction ID: H2-840</p>
<p>ACTIVITY OR EVENT IDENTIFIER FRP Effective 10/14/04</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Revised <input type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL % 12.00 %</p>	<p>NON-FEDERAL % 88.00 %</p> <p>Transaction ID: H2-841</p>

SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full) America Coming Together			
USE ONLY ONE SECTION			
State and Local Party Committees			
Fixed Percentage (select one)			
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)			
<input type="checkbox"/> Presidential and Senate Election Year (38% Federal)			
<input type="checkbox"/> Senate-Only Election Year (21% Federal)			
<input type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)			
Seperate Segregated Funds and Non-Connected Committees			
Fixed Percentage (select one)			
Estimated Direct Candidates Support – Federal	12.00	%	
Estimated Direct Candidates Support – Non-Federal	88.00	%	
ADJUSTMENTS TO FUNDS EXPENDED:			
Actual Direct Candidate			
Support -- Federal		0.00	%
Actual Direct Candidate			
Support – Non-Federal	0.00		

Post
General 12/2/04

SCHEDULE H2 (FEC Form 3X)

ALLOCATION RATIOS

PAGE 5 / 15549

NAME OF COMMITTEE (In Full)
America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
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ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported	12.00 %	88.00 %
		Transaction ID: H2-841

METHOD OF ALLOCATION FOR:

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NAME OF COMMITTEE (In Full)
 America Coming Together

USE ONLY ONE SECTION

State and Local Party Committees

Fixed Percentage (select one)

Presidential-Only Election Year (28% Federal)

Presidential and Senate Election Year (36% Federal)

Senate-Only Election Year (21% Federal)

_____ Non-Presidential and Non-Senate Election Year (15% Federal)

Seperate Segregated Funds and Non-Connected Committees

Fixed Percentage (select one)

Estimated Direct Candidates Support – Federal		2.00	%
---	--	------	---

Estimated Direct Candidates Support – Non-Federal	98.00	%	
---	-------	---	--

ADJUSTMENTS TO FUNDS EXPENDED:

Actual Direct Candidate

Support -- Federal		0.00	%
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Actual Direct Candidate

Support – Non-Federal	0.00		
-----------------------------	------	--	--

Year
End

1/30/04

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

NAME OF COMMITTEE (In Full)

America Coming Together

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
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ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support CHECK IF THE RATIO IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Revised <input type="checkbox"/> Same as Previously Reported	2.00 %	98.00 %
		Transaction ID: R1

*Amended
Year
End 4/19/04*

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full)
America Coming Together

USE ONLY ONE SECTION

State and Local Party Committees

Fixed Percentage (select one)

Presidential-Only Election Year (28% Federal)

Presidential and Senate Election Year (38% Federal)

Senate-Only Election Year (21% Federal)

_____ Non-Presidential and Non-Senate Election Year (15% Federal)

Seperate Segregated Funds and Non-Connected Committees

Fixed Percentage (select one)

Estimated Direct Candidates Support – Federal 2.00 %

Estimated Direct Candidates Support – Non-Federal 98.00 %

ADJUSTMENTS TO FUNDS EXPENDED:

Actual Direct Candidate

Support -- Federal 0.00 %

Actual Direct Candidate

Support – Non-Federal 0.00

Amended 4/19/04
Year End

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

NAME OF COMMITTEE (In Full)
America Coming Together

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ACTIVITY OR EVENT IDENTIFIER FRP	FEDERAL %	NON-FEDERAL %
ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support CHECK IF THE RATIO IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Revised <input type="checkbox"/> Same as Previously Reported	2.00 %	98.00 %
		Transaction ID: R1

--

EXHIBIT B

**AMERICA COMING TOGETHER
SOLICITATION LETTER**



17 States

25,000 Organizers

200,000 Volunteers

10 Million Doors Knocked On

**.. and a one-way ticket
back to Crawford, Texas**



America Coming Together Enrollment Fo

I Want to Provide Critically Needed Financial Support.

I'm excited that progressives are getting organized in an unprecedented way. And I want to help *America Coming Together* defeat George W. Bush and elect progressive candidates by organizing an unprecedented, door-to-door campaign. To help advance this essential organizing effort, I am enclosing a special donation of:

- \$25
- \$35
- \$50
- \$100
- \$500
- Other \$ _____

I Also Want to Volunteer My Time and Energy.

As *America Coming Together* plans its activities in the months ahead, please contact me about volunteering.

- I'd be willing to contact my friends and neighbors about *America Coming Together*.
- As Election Day approaches, I'd like to be a part of the *America Coming Together* Get-Out-The-Vote operation.
- I'm willing to do anything you need done.

I Want to Be an America Coming Together E-Activist

I know that events move quickly in a presidential election year and that *America Coming Together* must be prepared to take action at a moment's notice. Please keep me as up-to-date as possible with e-alerts.

My e-mail address is _____@_____

My phone contact information is:

Home: (____) _____

Work: (____) _____

Please make any necessary corrections to your name and address. Make checks payable to ACT, and return in the enclosed envelope or send to 1120 Connecticut Ave., NW, Suite 1120, Washington, DC 20036. Thank you.

To make your gift by credit card, please see reverse side of this form.

Contributions to ACT are not tax deductible for charitable purposes.

All contributions permissible under federal law (individual contributions of \$5,000 or less per calendar year) will be placed in ACT's federal account to be used in connection with federal elections.



Ellen R. Malcolm
President

Dear Friend,

Are you ready to go for it, prepared to lay everything on the line to win in 2004?

I hope so. Because, if we can count on your personal support and active participation, 2004 will be a year of *America Coming Together* and George W. Bush going home.

To keep their grasp on the White House and win other critical key House, Senate and local races, the Bush campaign and the Republican National Committee are amassing a political fortune. By Election Day, they will have raised and spent over half a billion dollars to hold onto power.

We can't match them dollar-for-dollar. But, we can — and must — match them door-for-door.

America is divided almost evenly between those who support President Bush and those who believe he is taking America in the wrong direction. In the presidential contest and in other key federal, state and local races, the elections of 2004 will be won by whichever side does the best job identifying and mobilizing its supporters.

That's why some of the leading progressive organizers in America have come together to advance a bold, far-reaching Action Plan, an outline of which I have enclosed with this letter.

With help from committed activists like you, *America Coming Together (ACT)* will organize millions of face-to-face, door-to-door, neighbor-to-neighbor contacts that will shape the outcome of the 2004 elections — and shape the future of American politics.

And, when Election Day is over, we will have defeated George W. Bush and elected progressive candidates all across the nation. The extraordinary effort we're undertaking is in response to the extraordinary damage Bush and his allies do, on a daily basis, to values we believe in and to people we care about.

In communities all across America, people are hurting because Bush's mindless devotion

(read on, please)

Steve Rosenthal Chief Executive Officer / Main Office / 888 16th St. NW / Suite 450 / Washington, DC 20006 / T 202 974 8360 / F 202 974 6361
Ellen R. Malcolm President / Fundraising Office / 1120 Connecticut Ave. NW / Suite 1120 / Washington, DC 20036 / T 202 419 1040 / F 202 419 1050

Paid for by America Coming Together (www.actvictory.org) and not authorized by any candidate's committee.

(2)

to tax cuts for the wealthy is making a shambles of our economy. Bush has turned record budget surpluses into record deficits in no time flat.

He has worked hard to undermine a woman's right to choose. His reckless disregard for the environment has eroded decades of progress. He's set timber companies loose on our national forests — and he's set John Ashcroft loose on our civil liberties.

But, wishing won't make Bush, Cheney, Ashcroft, DeLay and their extremist agenda go away. People-to-people organizing will — and organizing is what ACT is all about.

With your help, we're going to put people back into politics — big-time.

What's it going to take to defeat George W. Bush and elect strong progressive candidates across the country? It's going to take an ambitious, history-making voter contact plan — and it's going to take people like you getting involved.


Do you believe that there is no higher priority in 2004 than defeating George W. Bush and electing strong progressives to replace those politicians who have helped Bush advance his extreme agenda?

Are you willing to help *America Coming Together* finance and execute the most far-reaching and intensive face-to-face campaigning by progressives that America has ever seen?

Here's what *America Coming Together* is all about. It's about people like you and me making a personal commitment to defeating George W. Bush and electing strong progressive candidates.

It's time to put our money where our hearts are. Please join us.

Sincerely,



Ellen R. Malcolm
President

P.S. As our Action Plan unfolds in the months ahead, we'll be counting on both your financial support and your personal participation. So, as you write your check, please take a moment to fill out the enclosed *America Coming Together* enrollment form.

Whether you're in one of our 17 target states or not, there is much you can do. So be sure to let us know how you'd like to be involved.



A Bold Action Plan Essential to Victory in 2004

Introduction

How do we give progressive candidates the winning edge in the race for the White House and other closely contested elections in 2004?

We organize like we've never organized before — and we work together.

Our America Coming Together Action Plan is based on proven techniques and directed by proven leaders. Our ambitious voter contact plan will be designed and executed by Steve Rosenthal, ACT's Chief Executive Officer. Before joining ACT, Steve served for eight years as the Political Director of the AFL-CIO, where he developed a ground-breaking voter contact program that increased voter turnout of union members by 4.8 million during a time when non-union turnout decreased by 15 million.

And ACT's President is Ellen R. Malcolm, who revolutionized American politics as founder and president of EMILY's List, the largest political action committee in America. EMILY's List elects pro-choice Democratic women to office and, since 1994, its WOMEN VOTE! program has helped mobilize women to vote, turning the advantage of the "gender gap" into votes for Democrats.

Here are some of the key details of our Action Plan.

Seventeen States

As the 2004 elections approach, Democrats have a firm grasp on 168 electoral votes. They're in states that the Democratic candidate is almost guaranteed to win. President Bush, on the other hand, seems an almost certain winner in states that add up to 190 electoral votes.

(over, please)

That leaves seventeen states with 180 electoral votes as the competitive battleground in this election. Those states will not only determine the outcome of the presidential election, they will be the home of dozens of key federal, state and local races as well.

Our America Coming Together Action Plan will focus all of our attention in these key states — the ones that will decide in which direction America goes after the 2004 elections.

There's no doubt that America Coming Together can make a decisive difference. Consider the facts:

- In Wisconsin (10 electoral votes), 2,598,607 people voted and Al Gore won by 5,396 votes.
- In Oregon (7 electoral votes), 2,598,601 ballots were cast, Gore won by just 6,765 votes. And, how close are things in Oregon today? In a recent poll, 41% say they will vote to re-elect Bush, 47% plan to vote for or consider someone else, and 13% are undecided.
- And, of course, in Florida, 5,963,110 votes were counted and Bush was declared the winner by a margin of only 537. And, today, a majority of Florida voters say they will vote for or consider a candidate other than Bush in 2004.

25,000 organizers

At the heart of our America Coming Together Action Plan is an effort to build an infrastructure of deeply committed organizers. Each state will be led by a highly experienced state director.

We're already putting directors in place in nine states. Eight more will be added as soon as we have the financial support to know that we can carry out an effective effort in those states. That's why your immediate help is so vitally important.

Each state director will build a detailed plan and strategy to match the specific circumstances of his or her state. But, the centerpiece of each state plan is specific vote goals — city-by-city, county-by-county, precinct-by-precinct, voter-by-voter. We know how many votes we need to defeat President Bush and elect progressive candidates and we're organizing a massive, interconnected program of voter contact to go out and find those votes.

We'll begin with an early canvass, knocking on people's doors, getting the lay of the land. Then, come summer, we'll launch a massive door-to-door effort — contacting voters, identifying our supporters, and learning what issues matter most in their lives. We'll follow up with a stream of individual communications around the issues people have told us they are most concerned about.

The America Coming Together effort will combine all the spirit and energy of old-fashioned political organizing with all the technology and innovation of 21st century politics.

As our canvassers go door-to-door, they'll be equipped with hand-held computer devices, allowing them to keep a detailed record of every contact and to help shape the content of future communications with a voter based upon what that voter has told us he cares about the most.

Then, we'll work our hearts out right through the fall — staying in close contact with voters, making sure they have the information they need, registering voters, organizing absentee and early voting programs, and more.

Our plan will culminate in the most sophisticated and massive Get-Out-The-Vote operation America has ever seen. And, when we're done, American politics will never be the same.

200,000 Volunteers

Our America Coming Together Action Plan will rely upon a core of full-time, experienced, paid organizers in each of our target states — a group that will expand in number as Election Day gets closer. But, the energy, spirit and enthusiasm of volunteers must and will play an essential role in our campaign.

As ACT canvassers go door-to-door, they will be constantly on the lookout for people willing to play an ongoing role in our campaign — people like you.

Our most committed volunteers will be asked to "take responsibility" for a group of voters in their neighborhood, staying in touch with them throughout the campaign, making sure they have all the information they need, and assuring that, come Election Day, they get out and vote for our candidates.

By the time, Election Day rolls around, ACT will have mobilized over 200,000 volunteers — people willing to commit their personal time and energy to the effort to end the Bush presidency and elect progressive candidates.

Our goal is to put every ounce of energy those volunteers commit to the most effective use. Our America Coming Together Action Plan is a bold, but well-considered, undertaking.

10 million doors knocked on.

The America Coming Together Action Plan is based upon reaching out to millions of carefully targeted voters in the seventeen most competitive states. If we commit the time, energy, and financial resources to engaging people in an ongoing conversation

throughout 2004, we can build a broader community of support and an unstoppable margin of victory.

We've got to find those voters who will support our candidates and we've got to engage them face-to-face. We know that, in 2004, voters will experience an avalanche of radio and television ads. Those ads have their place and it's critical for progressive candidates to stay competitive in the tit-for-tat media wars.

But, you and I both know that these mass market, impersonal communications aren't enough to truly engage people. Continuing declines in voter participation are evidence enough of that.

Our 2004 America Coming Together strategy isn't about adding to the media clutter. It's about putting good old-fashioned community organizing back into the electoral process. Our ambitious, well-considered plan revolves around face-to-face, door-to-door, neighbor-to-neighbor campaigning.

It's not only the most edifying thing to do; it's the most effective thing to do.

Experience has shown that multiple personal contacts, beginning well before the election and running right up through Election Day, are the most powerful way to engage citizens in politics. And, that's just what our America Coming Together strategy is all about.

And a one-way ticket back to Crawford, Texas.

The effort we're undertaking won't be inexpensive. Our America Coming Together Action Plan will cost \$94 million to carry out. We've already raised \$32 million and, to keep our efforts on track, we must raise the next \$5 million before the end of the year.

But, the rewards of victory will be well worth the time, effort, and money we invest. With your help, our America Coming Together Action Plan can help propel progressive candidates to victory in vitally important state, local and federal contests — and it can help buy George W. Bush a one-way ticket back to Crawford, Texas.

Let's get mad. Let's get organized. Let's win.

What People Are Saying About America Coming Together



"I helped found EMILY's List because I knew that, if we wanted to elect more pro-choice Democratic women, we had to change politics and break through the barriers that were stopping women candidates from winning. It's time to change politics again — and that's what *America Coming Together* is all about."

Ellen R. Majors
America Coming Together
President



"I wholeheartedly support the *America Coming Together* Action Plan. It's about time we came together and organized the kind of extraordinary efforts it takes to win on Election Day. I urge you to support this important organization."

Former Texas Governor Ann Richards

"With the Bush Administration in power, and the way it has exploited the terrorist attacks of September 11, I feel very uncomfortable about the direction in which the U.S. is taking the world, and to me it is not business as usual. It is for this reason that I am supporting *America Coming Together*. ACT is an effective way to mobilize civil society, to convince people to go to the polls and vote."

George Soros

"I'm proud to be a part of *America Coming Together*. The only way to protect our environment is to defeat President Bush and elect strong environmental candidates nationwide. The *America Coming Together* Action Plan is essential to that task."

Carl Pope
Sierra Club Executive Director and
America Coming Together board member

"The record is clear. If we talk to voters one-on-one, at the door, in their neighborhoods, on the phone, in the mail and on the Internet about the issues they care about — and weave our communications into an ongoing dialogue, they will come out to vote and make a change. That's why I'm proud to be a part of *America Coming Together*."

Steve Rosenthal
ACT CEO and former AFL-GO Political Director



www.act4victory.org

118



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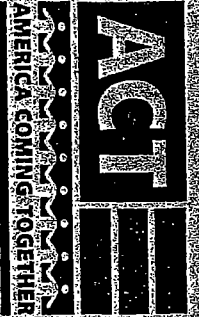
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AMERICA COMING TOGETHER
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MERRIFIELD VA 22116-9526



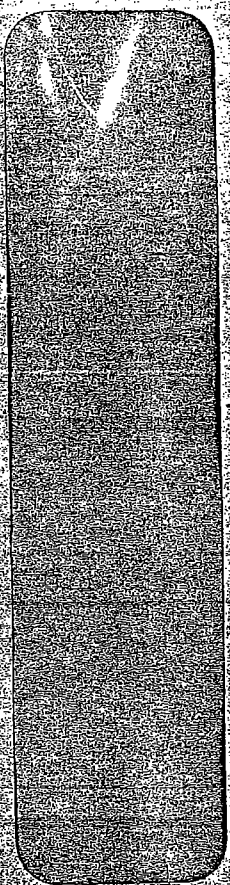
EXHIBIT C

**AMERICA COMING TOGETHER
SOLICITATION LETTER**



17 States
25,000 Organizers
200,000 Volunteers
10 Million Doors Knocked On

*... and a one-way
ticket back to
Crawford, Texas.*





Ellen R. Malcolm
President

Dear Friend,

Are you ready to go for it, prepared to lay everything on the line to win in 2004?

I hope so. Because, if we can count on your personal support and active participation, 2004 will be a year of *America Coming Together* and George W. Bush and his Republican colleagues in Washington as well as the state and local levels going home.

To keep their grasp on the White House and win other critical key House, Senate and local races, the Bush campaign and the Republican National Committee and their powerful special interest allies are amassing a political fortune. By Election Day, they will have raised and spent over half a billion dollars to hold onto power.

We can't match them dollar-for-dollar. But, we can — and must — match them door-for-door. And in many critical states we'll be at work in places where the Kerry Campaign and the Democratic Party simply don't have the resources to operate.

America is divided almost evenly between those who support President Bush and those who believe he is taking America in the wrong direction. In the presidential contest and in other key federal, state and local races, the elections of 2004 will be won by whichever side does the best job identifying and mobilizing its supporters.

That's why some of the leading progressive organizers in America have come together to advance a bold, far-reaching Action Plan, an outline of which I have enclosed with this letter.

With help from committed activists like you, *America Coming Together (ACT)* will organize millions of face-to-face, door-to-door, neighbor-to-neighbor contacts that will shape the outcome of the 2004 elections — and shape the future of American politics.

And, when Election Day is over, we will have helped John Kerry defeat George W. Bush and elected progressive candidates all across the nation. The extraordinary effort we're undertaking is in response to the extraordinary damage Bush and his allies do, on a daily basis, to values we believe in and to people we care about.

(read on, please)

(2)

In communities all across America, people are hurting because of the GOP's mindless devotion to tax cuts for the wealthy is making a shambles of our economy. With the President's support, the Republicans in Congress have turned record budget surpluses into record deficits in no time flat.

He has worked hard to undermine a woman's right to choose. His reckless disregard for the environment has eroded decades of progress. He's set timber companies loose on our national forests — and he's set John Ashcroft loose on our civil liberties.

But, wishing won't make Bush, Cheney, Ashcroft, DeLay and their extremist agenda go away. Wishing won't elect John Kerry. People-to-people organizing will — and organizing is what ACT is all about.

With your help, we're going to put people back into politics — big-time.

What's it going to take to defeat George W. Bush and elect strong progressive candidates across the country? It's going to take an ambitious, history-making voter contact plan — and it's going to take people like you getting involved.

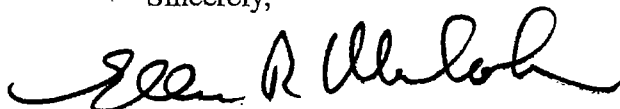
Do you believe that there is no higher priority in 2004 than defeating George W. Bush and electing strong progressives to replace those politicians who have helped Bush advance his extreme agenda?

Are you willing to help *America Coming Together* finance and execute the most far-reaching and intensive face-to-face campaigning by progressives that America has ever seen?

Here's what *America Coming Together* is all about. It's about people like you and me making a personal commitment to defeating George W. Bush and electing strong progressive candidates at all levels of government — federal, state, and local.

It's time to put our money where our hearts are. Please join us.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen R. Malcolm". The signature is fluid and cursive, with a large initial "E" and "M".

Ellen R. Malcolm
President



A Bold Action Plan Essential to Victory in 2004

Introduction

How do we give progressive candidates the winning edge in the race for the White House and other closely contested elections in 2004?

We organize like we've never organized before — and we work together.

Our America Coming Together Action Plan is based on proven techniques and directed by proven leaders. Our ambitious voter contact plan was designed by Steve Rosenthal, ACT's Chief Executive Officer. Before joining ACT, Steve served for eight years as the Political Director of the AFL-CIO, where he developed a groundbreaking voter contact program that increased voter turnout of union members by 4.8 million during a time when non-union turnout decreased by 15 million.

And ACT's President is Ellen R. Malcolm, who revolutionized American politics as founder and president of EMILY's List, the largest political action committee in America. EMILY's List elects pro-choice Democratic women to office and, since 1994, its WOMEN VOTE! program has helped mobilize women to vote, turning the advantage of the "gender gap" into votes for Democrats.

Here are some of the key details of our Action Plan.

Seventeen States

As the 2004 elections approach, Democrats have a firm grasp on 168 electoral votes. They're in states that the Democratic candidate is almost guaranteed to win. President Bush, on the other hand, seems an almost certain winner in states that add up to 190 electoral votes.

(over, please)

Steve Rosenthal Chief Executive Officer / Main Office / 888 16th St. NW / Suite 450 / Washington, DC 20006 / T 202 974 8360 / F 202 974 6361

Ellen R. Malcolm President / Fundraising Office / 1120 Connecticut Ave. NW / Suite 1120 / Washington, DC 20036 / T 202 419 1040 / F 202 419 1050



That leaves seventeen states with 180 electoral votes as the competitive battleground in this election. It will be in those states that the Presidential candidates will focus most of their resources and the media most of their attention. Those states will not only determine the outcome of the presidential election, they will be the home of dozens of key federal, state and local races as well.

Our America Coming Together Action Plan will focus all of our attention in these key states — the ones that will decide in which direction America goes after the 2004 elections.

There's no doubt that America Coming Together can make a decisive difference in the Presidential election and for all progressive candidates at all levels. Consider the facts:

- In Wisconsin (10 electoral votes), 2,598,607 people voted and Al Gore won by 5,396 votes.
- In Oregon (7 electoral votes), 2,598,601 ballots were cast, Gore won by just 6,765 votes. And, how close are things in Oregon today? In a recent poll, 41% say they will vote to re-elect Bush, 47% plan to vote for or consider someone else, and 13% are undecided.
- And of course in Florida (27 electoral votes), 5,963,110 votes were counted and Bush was declared the winner by a margin of only 537. And, today, a majority of Florida voters say they will vote for or consider a candidate other than Bush in 2004.

25,000 organizers

At the heart of our America Coming Together Action Plan is an effort to build an infrastructure of deeply committed organizers. We are putting highly experienced directors in each state.

We have now opened 46 offices and have already hired 15 state directors, who are rapidly organizing their states. We need to add two more states as soon as possible, but we must have the financial support to know that we can carry out an effective effort in those states first. That's why your immediate help is so vitally important.

Each state director builds a detailed plan and strategy to match the specific circumstances of his or her state. But, the centerpiece of each state plan is specific vote goals — city-by-city, county-by-county, precinct-by-precinct, voter-by-voter.

We know how many votes we need to defeat President Bush and elect progressive candidates and we're organizing a massive, interconnected program of voter contact to go out and find those votes.

We started with an early canvass, knocking on people's doors, getting the lay of the land. And have now launched a massive door-to-door effort — contacting voters, identifying our supporters, and learning what issues matter most in their lives. We'll follow up with a stream of individual communications around the issues people have told us they are most concerned about.

The America Coming Together effort is combining all the spirit and energy of old-fashioned political organizing with all the technology and innovation of 21st century politics.

Our canvassers are equipped with hand-held computer devices, allowing them to keep a detailed record of every contact and to help shape the content of future communications with a voter based upon what that voter has told us he cares about the most.

We're going to work our hearts out right through the fall — staying in close contact with voters, making sure they have the information they need, registering voters, organizing absentee and early voting programs, and more.

Our plan will culminate in the most sophisticated and massive Get-Out-The-Vote operation America has ever seen. And, when we're done, American politics will never be the same.

200,000 Volunteers

Our America Coming Together Action Plan relies upon a core of full-time, experienced, paid organizers in each of our target states — a group that will expand in number as Election Day gets closer. But, the energy, spirit and enthusiasm of volunteers must and will play an essential role in our campaign.

As ACT canvassers go door-to-door, they are constantly on the lookout for people willing to play an ongoing role in our campaign — people like you.

Our most committed volunteers are asked to “take responsibility” for a group of voters in their neighborhood, staying in touch with them throughout the campaign, making sure they have all the information they need, and assuring that, come Election Day, they get out and vote for our candidates.

By the time Election Day rolls around, ACT will have mobilized over 200,000 volunteers — people willing to commit their personal time and energy to the effort to end the Bush presidency and elect progressive candidates at all levels.

Our goal is to put every ounce of energy those volunteers commit to the most effective use. Our America Coming Together Action Plan is a bold, but well-considered, undertaking.

10 million doors knocked on.

The America Coming Together Action Plan is based upon reaching out to millions of carefully targeted voters in the seventeen most competitive states. If we commit the time, energy, and financial resources to engaging people in an ongoing conversation throughout 2004, we can build a broader community of support and an unstoppable margin of victory.

We've got to find those voters who will support our candidates and we've got to engage them face-to-face. We know that, in 2004, voters will experience an avalanche of radio and television ads. Those ads have their place and it's critical for progressive candidates to stay competitive in the tit-for-tat media wars.

But, you and I both know that these mass market, impersonal communications aren't enough to truly engage people. Continuing declines in voter participation are evidence enough of that.

Our 2004 America Coming Together strategy isn't about adding to the media clutter. It's about putting good old-fashioned community organizing back into the electoral process. Our ambitious, well-considered plan revolves around face-to-face, door-to-door, neighbor-to-neighbor campaigning.

It's not only the most edifying thing to do; it's the most effective thing to do.

Experience has shown that multiple personal contacts, beginning well before the election and running right up through Election Day, are the most powerful way to engage citizens in politics. And, that's just what our America Coming Together strategy is all about.

And a one-way ticket back to Crawford, Texas.

The effort we're undertaking aren't inexpensive. The cost of the America Coming Together Action Plan is \$110 million. We've already raised \$62 million and, to keep our efforts on track, we must raise the next \$5 million within 30 days.

But, the rewards of victory are worth the time, effort, and money we are investing. With your help, our America Coming Together Action Plan will help propel progressive candidates to victory in vitally important state, local and federal contests — and it will help buy George W. Bush a one-way ticket back to Crawford, Texas.

Let's get mad. Let's get organized. Let's win.



I Want to Provide Critically Needed Financial Support.

I'm excited that progressives are getting organized in an unprecedented way. And I want to help *America Coming Together* defeat George W. Bush and elect progressive candidates at all levels by organizing an unprecedented, door-to-door campaign. To help advance this essential organizing effort, I am enclosing a special donation of:

- \$25
 \$35
 \$50
 \$100
 \$500
 Other \$ _____

This amount would really help!

Paid for by America Coming Together
(www.act4victory.org) and not authorized
by any candidate's committee

I Also Want to Volunteer My Time and Energy.

As *America Coming Together* plans its activities in the months ahead, please contact me about volunteering:

- I'd be willing to contact my friends and neighbors about *America Coming Together*.
- As Election Day approaches, I'd like to be a part of the *America Coming Together* Get-Out-The-Vote operation.
- I'm willing to do anything you need done.

I Want to Be an America Coming Together E-Activist.

I know that events move quickly in a presidential election year and that *America Coming Together* must be prepared to take action at a moment's notice. Please keep me as up-to-date as possible with e-alerts.

My e-mail address is: _____@_____.

My phone contact information is:

Home: (____) _____ - _____ Work: (____) _____ - _____

Please make any necessary corrections to your name and address. Make checks payable to ACT, and return in the enclosed envelope or send to 1120 Connecticut Ave., NW, Suite 1120, Washington, DC 20036. Thank you.

To make your gift by credit card, please see reverse side of this form.

Contributions to ACT are not tax deductible for charitable purposes.

All contributions permissible under federal law (individual contributions of \$5,000 or less per calendar year) will be placed in ACT's federal account to be used in connection with federal elections.



Please charge my contribution to:

MasterCard

VISA

American Express

Gift amount _____

Account number _____

Expiration date _____

Signature _____

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year.

Name: _____ If federal PAC: Contact: _____

Current address: _____

Telephone no.: Home: _____ Office: _____

Current occupation: _____ Employer: _____

Federal law prohibits foreign nationals, except legal permanent residents of the U.S., from contributing to America Coming Together. Please certify the information below by signing this card.

If an individual: I am a citizen of the United States ____ (or) I am a legal permanent resident of the United States ____

Signature _____

What People Are Saying About

America Coming Together

"I helped foundeWILN's list because I knew that I've wanted to elect more pro-choice Democratic women. We had to change politics and break through the barriers that were stopping women candidates from winning. It's time to change politics again — and that's what *America Coming Together* is all about."

Ellen R. Malcom
America Coming Together
President

"I wholeheartedly support the *America Coming Together* Action Plan. It's about time we came together and organized the kind of extraordinary efforts it takes to win on Election Day. I urge you to support this important organization."

Former Texas Governor Ann Richards

"With the Bush Administration in power, and the way it has exploited the terrorist attacks of September 11, I feel very uncomfortable about the direction in which the U.S. is taking the world, and to me it is not business as usual. It is for this reason that I am supporting *America Coming Together*. ACT is an effective way to mobilize civil society, to convince people to go to the polls and vote."

George Soros

"I'm proud to be a part of *America Coming Together*. The only way to protect our environment is to defeat President Bush and elect strong environmental candidates nationwide. The *America Coming Together* Action Plan is essential to that task."

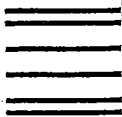
Carl Pope
Sierra Club Executive Director and
America Coming Together board member

"The record is clear. If we talk to voters one-on-one, at the door, in their neighborhoods, on the phone, in the mail and on the internet about the issues they care about — and weave our communications into an ongoing dialogue, they will come out to vote and make a change. That's why I'm proud to be a part of *America Coming Together*."

Steve Rosenthal
ACT CEO and former AFL-CIO Political Director



www.actvictory.org



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3-0703



EXHIBIT D

**EMILY'S LIST
H1 & H2 Schedules**

SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full) EMILY's List			
USE ONLY ONE SECTION			
State and Local Party Committees			
Fixed Percentage (select one)			
<input type="checkbox"/> Presidential-Only Election Year (28% Federal)			
<input type="checkbox"/> Presidential and Senate Election Year (36% Federal)			
<input type="checkbox"/> Senate-Only Election Year (21% Federal)			
<input type="checkbox"/> Non-Presidential and Non-Senate Election Year (15% Federal)			
Seperate Segregated Funds and Non-Connected Committees			
Fixed Percentage (select one)			
Estimated Direct Candidates Support – Federal	50.00	%	
Estimated Direct Candidates Support – Non-Federal	50.00	%	
ADJUSTMENTS TO FUNDS EXPENDED:			
Actual Direct Candidate			
Support -- Federal	0.00	%	
Actual Direct Candidate			
Support – Non-Federal	0.00		

Post
General
04

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

PAGE 7 / B842

NAME OF COMMITTEE (In Full)
EMILY's List

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

ACTIVITY OR EVENT IDENTIFIER Fundraising/PSP 2004	FEDERAL %	NON-FEDERAL %
ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support	50.00 %	50.00 %
CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported		Transaction ID: H2-EL-756

SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR:

- **SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE, GENERIC VOTER DRIVE AND EXEMPT ACTIVITY COSTS**
- **SHARED FEDERAL AND LEVIN FUNDS FEDERAL ELECTION ACTIVITY EXPENSES**

NAME OF COMMITTEE (In Full)	
EMILY's List	
USE ONLY ONE SECTION	
State and Local Party Committees	
Fixed Percentage (select one)	
<input type="checkbox"/>	Presidential-Only Election Year (28% Federal)
<input type="checkbox"/>	Presidential and Senate Election Year (38% Federal)
<input type="checkbox"/>	Senate-Only Election Year (21% Federal)
<input type="checkbox"/>	Non-Presidential and Non-Senate Election Year (15% Federal)
Seperate Segregated Funds and Non-Connected Committees	
Fixed Percentage (select one)	
Estimated Direct Candidates Support -- Federal	50.00 %
Estimated Direct Candidates Support -- Non-Federal	50.00 %
ADJUSTMENTS TO FUNDS EXPENDED:	
Actual Direct Candidate Support -- Federal	0.00 %
Actual Direct Candidate Support -- Non-Federal	0.00

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

NAME OF COMMITTEE (In Full)
EMILY's List

**RATIOS FOR ALLOCABLE FUNDRAISING EVENTS AND DIRECT CANDIDATE SUPPORT
ACTIVITIES APPEARING ON THIS REPORT.**

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

<p>ACTIVITY OR EVENT IDENTIFIER Fundraising/PSP 2003</p> <p>ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Direct Candidate Support</p> <p>CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported</p>	<p>FEDERAL % 50.00 %</p>	<p>NON-FEDERAL % 50.00 %</p> <p>Transaction ID: H2-EL-643</p>
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SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR SHARED FEDERAL AND NON-FED ADMINISTRATIVE EXPENSES AND GENERIC VOTER DRIVE COSTS

NAME OF COMMITTEE (In Full)
EMILY's List

USE ONLY ONE SECTION

Transaction ID: H1-EL-461

A. NATIONAL PARTY COMMITTEES

FIXED FEDERAL PERCENTAGE (Check the appropriate line and enter % in box to right) 0.00 %
 Presidential Year (85%)
 All Other Years (60%)

B. HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES

MINIMUM FEDERAL PERCENTAGE (85%) (If checked, enter 85% in box to right) 0.00 %
 OR
 FUNDS EXPENDED:
 . Estimated Direct Candidate Support – Federal 0.00 %
 . Estimated Direct Candidate Support – Non-Federal 0.00 %
ADJUSTMENTS TO FUNDS EXPENDED:
 Actual Direct Candidate Support – Federal 0.00 0.00 %
 Actual Direct Candidate Support – Non-Federal 0.00

NOTE: Funds expended must be used if the Federal proportion is greater than 85% in any year.

C. SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES

FUNDS EXPENDED:
 . Estimated Direct Candidate Support – Federal 50.00 %
 . Estimated Direct Candidate Support – Non-Federal 50.00 %
ADJUSTMENTS TO FUNDS EXPENDED:
 Actual Direct Candidate Support – Federal 0.00 0.00 %
 Actual Direct Candidate Support – Non-Federal 0.00

D. STATE AND LOCAL PARTY COMMITTEES

BALLOT COMPOSITION

Check all Offices appearing on the next General Election Ballot:

		NUMBER OF POINTS
1. President	<input type="checkbox"/> (1 point)	
2. U.S. Senate	<input type="checkbox"/> (1 point)	
3. U.S. Congress	<input type="checkbox"/> (1 point)	
4. SUBTOTAL -- Federal (ADD 1, 2, AND 3)		
5. Governor	<input type="checkbox"/> (1 point)	
6. Other Statewide Office(s)	<input type="checkbox"/> (1 point or 2 Points) ..	
7. State Senate	<input type="checkbox"/> (1 point)	
8. State Representative	<input type="checkbox"/> (1 point)	
9. Local Candidates	<input type="checkbox"/> (1 point or 2 Points) ..	
10. Extra Non-Federal Point	<input type="checkbox"/> (1 point)	
11. SUBTOTAL – Non-Federal (Add 5, 6, 7, 8, 9, and 10)		
12. TOTAL POINTS (Line 4 plus Line 11)		

FEDERAL ALLOCATION = Line 4 divided by Line 12 %

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

NAME OF COMMITTEE (In Full)

EMILY's List

ALLOCATION RATIOS FOR INDIVIDUAL FUND-RAISING EVENTS, EXEMPT ACTIVITIES, AND SHARED DIRECT CANDIDATE SUPPORT APPEARING ON THIS REPORT.

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. **EXEMPT** activities are allocated using the 'time and space method' where the federal proportion of disbursements is based on the proportion of time or space devoted to federal candidates.
- III. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

NAME OF ACTIVITY OR EVENT
Fundraising/PSP 2002

ACTIVITY IS:

Fundraising Exempt Direct Candidate Support

FEDERAL % NON-FEDERAL %

50.00 % 50.00 %

CHECK IF THE RATIO IS:

New Revised Same as Previously Reported

Transaction ID:
H2-EL-462

Year-End 2001 H1 and H2 Schedule

SCHEDULE H1 (FEC Form 3X)

METHOD OF ALLOCATION FOR SHARED FEDERAL AND NON-FEDERAL ADMINISTRATIVE EXPENSES AND GENERIC VOTER DRIVE COSTS

NAME OF COMMITTEE (in Full) EMILY's List											
USE ONLY ONE SECTION	Transaction ID: H1-EL-238										
A. NATIONAL PARTY COMMITTEES											
<input type="checkbox"/> FIXED FEDERAL PERCENTAGE (Check the appropriate line and enter % in box to right)	0.00 %										
<input type="checkbox"/> Presidential Year (65%) <input type="checkbox"/> All Other Years (60%)											
B. HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES											
<input type="checkbox"/> MINIMUM FEDERAL PERCENTAGE (85%) (if checked, enter 85% in box to right)	0.00 %										
OR											
<input checked="" type="checkbox"/> FUNDS EXPENDED: . Estimated Direct Candidate Support – Federal	0.00 %										
. Estimated Direct Candidate Support – Non-Federal	0.00 %										
ADJUSTMENTS TO FUNDS EXPENDED:											
Actual Direct Candidate Support – Federal	0.00 %										
Actual Direct Candidate Support – Non-Federal	0.00 %										
NOTE: Funds expended must be used if the Federal proportion is greater than 85% in any year.											
C. SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES											
<input checked="" type="checkbox"/> FUNDS EXPENDED: . Estimated Direct Candidate Support – Federal	50.00 %										
. Estimated Direct Candidate Support – Non-Federal	50.00 %										
ADJUSTMENTS TO FUNDS EXPENDED:											
Actual Direct Candidate Support – Federal	0.00 %										
Actual Direct Candidate Support – Non-Federal	0.00 %										
D. STATE AND LOCAL PARTY COMMITTEES											
BALLOT COMPOSITION											
Check all Offices appearing on the next General Election Ballot:											
1. President <input type="checkbox"/> (1 point)	<table border="1" style="width: 100%; height: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">NUMBER OF POINTS</th> </tr> </thead> <tbody> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </tbody> </table>	NUMBER OF POINTS									
NUMBER OF POINTS											
2. U.S. Senate <input type="checkbox"/> (1 point)											
3. U.S. Congress <input type="checkbox"/> (1 point)											
4. SUBTOTAL -- Federal (ADD 1, 2, AND 3)											
5. Governor <input type="checkbox"/> (1 point)											
6. Other Statewide Office(s) <input type="checkbox"/> (1 point or 2 Points) ..											
7. State Senate <input type="checkbox"/> (1 point)											
8. State Representative <input type="checkbox"/> (1 point)											
9. Local Candidates <input type="checkbox"/> (1 point or 2 Points) ..											
10. Extra Non-Federal Point <input type="checkbox"/> (1 point)											
11. SUBTOTAL -- Non-Federal (Add 5, 6, 7, 8, 9, and 10)											
12. TOTAL POINTS (Line 4 plus Line 11)											
FEDERAL ALLOCATION = Line 4 divided by Line 12	%										

FEC Schedule H1 (Form 3X) (Revised 1/2001)

**SCHEDULE H2 (FEC Form 3X)
ALLOCATION RATIOS**

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NAME OF COMMITTEE (In Full)
EMILY's List

ALLOCATION RATIOS FOR INDIVIDUAL FUND-RAISING EVENTS, EXEMPT ACTIVITIES, AND SHARED DIRECT CANDIDATE SUPPORT APPEARING ON THIS REPORT.

Methods of allocation :

- I. **FUNDRAISING** activities are allocated using the 'funds received method' where the federal proportion of expenses must equal the federal proportion of monies raised.
- II. **EXEMPT** activities are allocated using the 'time and space method' where the federal proportion of disbursements is based on the proportion of time or space devoted to federal candidates.
- III. Shared **DIRECT CANDIDATE SUPPORT** activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on benefit derived by federal candidates from the activity.

NAME OF ACTIVITY OR EVENT	FEDERAL %	NON-FEDERAL %
Fundraising/PSP 2001		
ACTIVITY IS: <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Direct Candidate Support	50.00 %	50.00 %
CHECK IF THE RATIO IS: <input type="checkbox"/> New <input type="checkbox"/> Revised <input checked="" type="checkbox"/> Same as Previously Reported		Transaction ID: H2-EL-237

SCHEDULE H1
(revised 5/93)

**METHOD OF ALLOCATION FOR SHARED FEDEI
AND NON-FEDERAL ADMINISTRATIVE EXPENSES
AND GENERIC VOTER DRIVE COSTS**

NAME OF COMMITTEE
EMILY's List

NATIONAL PARTY COMMITTEES

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX TO RIGHT) %
 PRESIDENTIAL YEAR (85%)
 ALL OTHER YEARS (60%)

HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES

MINIMUM FEDERAL PERCENTAGE (85%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) %
 OR
 FUNDS EXPENDED:
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL %
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL %
 ADJUSTMENTS TO FUNDS EXPENDED:
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ %
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER THAN 65% IN ANY YEAR.

SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES

FUNDS EXPENDED: (November 28, 2000-December 31, 2000)
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL 50 %
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL 50 %
 ADJUSTMENTS TO FUNDS EXPENDED:
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ %
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$

STATE AND LOCAL PARTY COMMITTEES

BALLOT COMPOSITION
CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

	NUMBER OF POINTS
1. PRESIDENT <input type="checkbox"/> (1 POINT)	
2. U.S. SENATE <input type="checkbox"/> (1 POINT)	
3. U.S. CONGRESS <input type="checkbox"/> (1 POINT)	
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3)	
5. GOVERNOR <input type="checkbox"/> (1 POINT)	
6. OTHER STATEWIDE OFFICE(S) <input type="checkbox"/> (1 OR 2 POINTS)	
7. STATE SENATE <input type="checkbox"/> (1 POINT)	
8. STATE REPRESENTATIVE <input type="checkbox"/> (1 POINT)	
9. LOCAL CANDIDATES <input type="checkbox"/> (1 OR 2 POINTS)	
10. EXTRA NON-FEDERAL POINT <input type="checkbox"/> (1 POINT)	
11. SUBTOTAL — NON-FEDERAL (ADD 5, 6, 7, 8, 9, AND 10)	
12. TOTAL POINTS (LINE 4 PLUS LINE 11)	

FEDERAL ALLOCATION = LINE 4 DIVIDED BY LINE 12 %

SCHEDULE H2
(effective 1/1/91)

ALLOCATION RATIOS

NAME OF COMMITTEE
EMILY's List

ALLOCATION RATIOS FOR INDIVIDUAL FUNDRAISING EVENTS, EXEMPT ACTIVITIES, AND SHARED DIRECT CANDIDATE SUPPORT APPEARING ON THIS REPORT.

Methods of allocation:

I. **FUNDRAISING** activities are allocated using the "funds received method" where the federal proportion of expenses must equal the federal proportion of monies raised.

II. **EXEMPT** activities are allocated using the "time and space method" where the federal proportion of disbursements is based on the proportion of time or space devoted to federal candidates.

III. **Shared DIRECT CANDIDATE** support activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on the benefit derived by federal candidates from the activity.

NAME OF ACTIVITY OR EVENT	FEDERAL %	NON-FEDERAL %
<p>2000 PSP</p> <p>ACTIVITY IS: <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS: <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input checked="" type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	50	50
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS: <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS: <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON-FEDERAL %
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