

expenditures from personal funds was \$7.5 million while the aggregate amount of Miller's expenditures from personal funds was \$3 million. Unlike Arlene Miller, Hyer had not yet made any expenditures from personal funds, so the aggregate amount of his expenditures was \$0.00. Plugging these numbers into the formula, Hyer calculated the possible opposition personal funds amounts as follows:

Opposing candidate Rogers: \$7,500,000
 – \$0.00 = \$7,500,000
 Opposing candidate Miller: \$3,000,000
 – \$0.00 = \$3,000,000

Thus, Hyer concluded that it would be to his advantage to consider Rogers to be his "opposing candidate" for purposes of determining the opposition personal funds amount. According to his calculations, the applicable opposition personal funds amount as of April 6, 2003, was \$7.5 million. Hyer notified his national and State party committees and the Commission of this calculation, as required by 11 CFR 400.30(b).

Calculating the Increased Contribution and Coordinated Party Expenditure Limits for the Hyer Campaign

Hyer proceeded to calculate the increased contribution and coordinated party expenditure limits pursuant to the formulas in 11 CFR 400.40. Doing the necessary calculations according to the formulas in the table (illustrated below), Hyer determined that because the opposition personal funds amount (\$7,500,000) was between \$4,568,000 and \$11,420,000, the increased limit for individual contributions to his campaign was \$12,000 (six times the applicable limit (\$2,000)).

$(\$0.16 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$600,000 = \$4,568,000$
 $(\$0.40 \times 24,800,000 \text{ (VAP of New Franklin)}) + \$1,500,000 = \$11,420,000$

Hyer also determined that the increased coordinated party expenditure limit applicable to his campaign was \$1,781,136 (the greater of \$20,000 or \$0.02 times the voting age population of the State of New Franklin (24,800,000), as adjusted for inflation). Like Miller, Hyer was well aware of his party committees' policy of not making coordinated expenditures prior to the date of nomination when there was a contested primary.

Calculating the Proportionality Provision Amount for the Hyer Campaign

Before soliciting \$12,000 checks, however, Hyer decided it would be wise to figure out the aggregate amount of contributions his committee could

accept under the increased limit before it would become necessary, under 11 CFR 400.31, to refuse that portion of contributions made under the increased limit that exceeded the ordinary limit of \$2,000. Given that the opposition personal funds amount as of April 6, 2003, was \$7,500,000, Hyer made the following calculation: $1.10 \times \$7,500,000 = \$8,250,000$. Hyer began fundraising at once, knowing that he could accept contributions under the increased limits only until the aggregate amount all such contributions received by his campaign equaled \$8,250,000.

Additional Notification of Expenditure from Personal Funds

Meanwhile, Frank Rogers was starting to flounder. His campaign had already spent the \$7.5 million he had deposited on April 4th plus an additional \$1,000,000 in contributions his authorized committee had received to date. He decided that, in order to remain competitive with Miller and Hyer, he had no choice but to commit more of his personal funds to the race. So, on June 30, 2003, Rogers deposited an additional \$2,500,000 into his authorized committee's account. Because this expenditure from personal funds exceeded \$10,000, within 24 hours of depositing the funds, Rogers was required to file an additional notification of expenditure from personal funds on FEC Form 10, under 11 CFR 400.22. As he did with the initial notification, Rogers filed the original form with the Secretary of the Senate, and faxed copies of the form to the FEC and the Miller and Hyer campaigns. Although this amount was in excess of the amount stated on Roger's FEC Form 2, he was *not* required to amend that form.

Calculating the New Opposition Personal Funds Amount for the Miller and Hyer Campaigns

The Miller and Hyer campaigns received Rogers's additional notification of expenditures from personal funds on July 1, 2003. The Miller and Hyer campaigns endeavored to determine how Rogers's increase in spending from personal funds might affect their increased contribution limits. Before figuring out their new limits, however, each campaign first had to recalculate the opposition personal funds amount.

Turning to the formulas in 11 CFR 400.10, each candidate realized that as soon as July 16 the applicable formula would no longer be the one that applied prior to July 16, 2003. With vacations taking many staffers and potential contributors away, both committees elected to wait until the new formulas

were in effect before accepting any contributions. Once it was July 16, 2003, which was between July 16 of the year preceding the year in which the general election would be held and February 1 of the year in which the general election would be held, the formula required that the gross receipts advantage be taken into account.

Opposition Personal Funds Amount—Miller Campaign

To calculate the opposition personal funds amounts for the Miller campaign as of July 16, 2003, the following formula had to be used: $a - b - ((c - d) + 2)$, where:

(a) Represented the greatest amount of expenditures from personal funds made by the opposing candidate (Rogers) in the same election;

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the same election;

(c) Represented the aggregate amount of the gross receipts of Miller's authorized committee, minus any contributions by Miller from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30 of the year (2003) preceding the year in which the general election was to be held (2004); and

(d) Represented the aggregate amount of the gross receipts of Rogers's authorized committee, minus any contributions by Rogers from personal funds, during any election cycle that may be expended in connection with the primary election, as determined on June 30, 2003.

Variable (a)—Miller Campaign

Considering each variable in turn, as of June 30, 2003, Rogers had made aggregate expenditures from personal funds in the amount of \$10 million. So, as of that date, variable (a) in the formula for the Miller campaign equaled \$10,000,000.

Variable (b)—Miller Campaign

As of June 30, 2003, Miller had made aggregate expenditures from personal funds in the amount of \$3,000,000. Thus, as of that date, variable (b) in the formula for Miller's campaign equaled \$3,000,000.

Variable (c)—Miller Campaign

As of June 30, 2003, Miller's authorized committee had received contributions in connection with the primary election totaling \$4,000,000 and Miller's aggregate contributions from personal funds totaled \$3,000,000. Accordingly, as of June 30, 2003, variable (c) in the formula for the Miller