

amount was more than \$11,420,000 ($\$0.40 \times 24,800,000$ (VAP of New Franklin) + \$1,500,000), the following increased contribution and coordinated party expenditure limits applied to her campaign, under 11 CFR 400.40:

Increased contribution limit

\$12,000 ($6 \times \$2,000$ (applicable limit))

Coordinated party expenditure limit

Unlimited

Calculating the Proportionality Provision Amount for the Miller Campaign

Miller next calculated the aggregate amount of contributions her authorized committee would be able to receive before being in danger of exceeding 110 percent of the opposition personal funds amount (\$20,050,000), under 11 CFR 400.31:

$$1.10 \times \$20,050,000 = \$22,055,000$$

Miller started raising money in earnest. By the end of July, her campaign had managed to raise \$4,500,000, \$2,300,000 of which was received under the increased limits. In addition, sometime in the middle of the month, someone from the DSCC called to say they had not made any independent expenditures on her behalf, and wanted to make coordinated party expenditures to help her out. The DSCC official wanted to know what sort of help Miller needed most. Miller told the DSCC official that her campaign desperately needed air time in all of New Franklin's major media markets in order to compete with Rockford. The DSCC immediately purchased as much air time as was available between July 15, 2004, and Labor Day. The DSCC notified Miller that the total cost of the air time that the DSCC purchased on Miller's behalf was \$19,753,000 above the coordinated party expenditure limit. Although the New Franklin State Democratic Committee could also spend above the ordinarily-applicable \$1,781,136 coordinated party spending limit, Miller was told they planned to make no coordinated party expenditures on her behalf.

On August 1, 2004, Arlene Miller received a telephone call from Rex Duncan, an old college friend. Duncan said that he knew Miller was running against a self-financed candidate and he wanted to send her a contribution but he wasn't sure how much he was allowed to give. Duncan explained that, since Election Day 2002, he had made a number of contributions to other Federal candidates. As of August 1, 2004, the aggregate amount of Duncan's contributions was \$35,500, just \$2,000 shy of the aggregate 2-year limit of \$37,500 for individual contributions to

Federal candidate committees under 2 U.S.C. 441a(a)(3)(A). He asked Miller how much he would be allowed to contribute to her campaign. Miller informed Duncan that only the first \$2,000 of his contribution to any one Federal candidate counted against his 2-year aggregate limit, pursuant to 11 CFR 400.42. Any amount above the applicable limit given to candidates running against self-financing candidates was excluded from the calculation.

Nevertheless, Miller suspected that Duncan could not send her \$12,000, however, because she knew that her campaign was getting close to a crucial limit of its own under the proportionality provision. Miller told Duncan that she would have to call him back after she figured out how much of his money her campaign could legally accept. Miller calculated the aggregate amount of contributions already received and coordinated party expenditures already made under the increased limits, as follows: \$2,300,000 (contributions) + \$19,753,000 (coordinated expenditures) = \$22,053,000.

After performing these calculations, Miller realized that she could only accept \$2,000 from Duncan above the applicable limit of \$2,000. This meant that her campaign could accept a check from Duncan in the amount of \$4,000 because, although the first \$2,000 of his contribution *would* count against his 2-year aggregate limit of \$37,500, it *would not* count against the Miller campaign's proportionality provision limit of \$22,055,000. Miller called Duncan back and asked him to send her a check for \$4,000.

Realizing that, under 11 CFR 400.31(d)(1)(ii), Miller or her authorized committee was required to notify the national and State committees of her political party and the Commission within 24 hours of the time her campaign reached the proportionality provision limit, Miller immediately sent electronic mail messages to the DSCC, the New Franklin Democratic Federal Campaign Committee, and the Commission. Both committees were now on notice that they could no longer make coordinated expenditures on behalf of Miller's general election campaign in excess of the coordinated expenditure limitation in 11 CFR 109.32(b).

Miller realized that, unless Rockford spent more of his personal funds on behalf of his campaign, from that point forward, her campaign could only accept contributions up to the applicable limit (\$2,000 per individual). In addition, the national party

committee would be prohibited from making any more coordinated expenditures on behalf of the Miller campaign, although it could still contribute up to \$35,000 directly to her principal campaign committee.

On August 3, 2004, Rockford reluctantly used his personal funds to purchase \$30 million worth of air time between Labor Day and Election Day. Disappointed that he was again using personal funds, Rockford deemed \$20 million a contribution and \$10 million a personal loan. As required, Rockford filed his original FEC Form 10 with the Secretary of the Senate and faxed copies of the form to the Commission and the Miller campaign. Miller scrambled to recalculate the new opposition personal funds amount and increased contribution and coordinated party expenditure limits.

Calculating the New Opposition Personal Funds Amount for the Miller Campaign

Given that the date of computation (August 4, 2004) was on or after February 1 of the year in which the general election was to be held, the applicable formula was the one outlined in 11 CFR 400.10(a)(3) ($a - b - ((e - f) \div 2)$), where:

(a) Represented the greatest aggregate amount of expenditures from personal funds made by Rockford in the general election (\$51 million);

(b) Represented the greatest amount of expenditures from personal funds made by Miller in the general election (\$0);

(e) Represented the aggregate amount of gross receipts of Miller's authorized committee (\$2 million), minus any contributions by Miller from personal funds (\$0), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003; and

(f) Represented the aggregate amount of gross receipts of Rockford's authorized committee (\$1.1 million), minus any contributions by Rockford from personal funds (\$1 million), during any election cycle that may be expended in connection with the general election, as determined on December 31, 2003.

Miller determined the value of each variable as follows:

$$(a) = \$51,000,000$$

$$(b) = \$0$$

$$(e) = \$2,000,000 (\$2,000,000 - \$0)$$

$$(f) = \$100,000 (\$1,100,000 - \$1,000,000)$$

Plugging these values into the applicable formula, Miller determined that the opposition personal funds amount was \$45,750,000, calculated as follows: