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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MITCH MCCONNELL, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,

Defendants.

CIVIL ACTION NO.
02-0582 (CKK, KLH, RJL)

All consolidated cases.

AFFIDAVIT OF JAMES M. JORDAN

I, James M. Jordan, do depose and state as follows:

1. My name is James M. Jordan. I am currently the Executive Director of the Democratic Senatorial Campaign Committee ("DSCC"). I have served in this capacity since approximately January 2001. Before that I served as the DSCC's Political Director during 1999 and 2000. Through these positions, I am familiar with the day-to-day operations of the DSCC.

2. On or about June 3, 2002, the defendants in this case served a subpoena duces tecum on the DSCC pursuant to Rule 45 of the Federal Rules of Civil Procedure. I am submitting this affidavit and its attached exhibits on behalf of the DSCC in lieu of the DSCC's production of documents called for by the subpoena.

3. The DSCC is a Democratic political committee established and maintained by a national political party as defined and used by 11 C.F.R. § 110.2(c)(2)(iii).

4. The DSCC is comprised of sitting Democratic Members of the United States Senate. Democratic Senators are considered members of the DSCC as a consequence of their

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membership in the Democratic Caucus of the United States Senate. The chair of the DSCC is appointed by the Democratic Leader of the United States Senate.

5. From time to time, Democratic Senators have served in other DSCC offices, such as vice chair, or as chair of a particular program, such as the DSCC's Labor Council, Native American Council or Women's Council. Program chairs are typically asked to serve in such an honorary position due to their interest in, or connection to, a particular constituency.

6. The DSCC's primary function is to aid the election of Democratic Senate candidates and otherwise support the goals of the Democratic Party. The DSCC aids and encourages the election of Democratic Senate candidates by, among other things, contributing money to Democratic Senate candidates; making expenditures on behalf of Democratic Senate candidates, recruiting Democratic Senate candidates, providing campaign services to Democratic Senate candidates; advising Democratic Senate candidates; and supporting the production and dissemination of general public communications that promote the Democratic Party's position on issues of public concern and create a favorable political environment for Democratic Senate candidates (hereinafter referred to as "issue advocacy communications"). The DSCC also conducts an active program of support for nonfederal electoral candidates and supports other Democratic party building activities at the state and local level.

[C]¹⁷.

¹ Paragraphs in this affidavit designated with [C] are considered "Confidential" under the Protective Order entered by the Court on August 12, 2002. Paragraphs in this affidavit designated with [A] are considered "Attorneys Only" under the Protective Order.

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12. The DSCC maintains a series of federal accounts, into which it deposits funds consistent with the source restrictions and contribution limits of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 et seq. (2002) ("the Act"). From these accounts,

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the DSCC makes all its "contributions" and "expenditures," as those terms are defined and used by the Act. The contents of these accounts are sometimes colloquially referred to as "hard money."

13. The DSCC maintains a series of nonfederal accounts, into which it deposits funds inconsistent with the Act's source restrictions or contribution limits. From these accounts, the DSCC disburses funds to candidates for state and local office; to nonfederal accounts of state and national political party committees; and on some occasions to entities other than federally registered political committees. The DSCC also transfers funds from these accounts to its federal accounts to defray the nonfederal share of disbursements affecting both federal and nonfederal elections, as prescribed by 11 C.F.R. § 106.5. The contents of these accounts are sometimes colloquially referred to as "soft money."

14. To ensure compliance with applicable state law, the DSCC segregates its nonfederal funds according to the source of funds received. For example, it maintains separate nonfederal accounts for corporate treasury funds, labor treasury funds, funds donated by individuals, funds donated by federally registered political committees in excess of federal limits, and funds donated by other sources. In some instances, applicable state law may require the DSCC to maintain a nonfederal account specifically for activity in a particular state. Activity in each of these accounts is disclosed on reports filed by the DSCC with the FEC.

15. The DSCC also maintains a building fund into which it deposits funds inconsistent with the Act's source restrictions or contribution limits. The DSCC disburses funds from this account to defray costs incurred for the construction and purchase of its office facility.

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building fund in order to comply with the restrictions federal law places on their election activity. Other donors specifically designate their donations to the building fund because they prefer that their funds not be used in any state election activity.

17. The DSCC discloses information to the Secretary of the Senate on forms prepared by the FEC about each person that donates an aggregate amount exceeding \$200 during a calendar year to its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes, but is not limited to, the person's name and address, and the date of receipt and amount of each particular donation.

18. The DSCC discloses information to the Secretary of the Senate on forms prepared by the FEC about each person to which it makes disbursements in an aggregate amount exceeding \$200 in a calendar year from its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes the person's name and address; and the date, amount and purpose of each particular disbursement.

19. The DSCC raises funds in a variety of ways to support its organizational purposes and functions.

[A]20. The DSCC directs its efforts to raising funds generally without regard to their type, while preferring to raise federal funds. Usually, when seeking funds from major donors, DSCC Members and staff solicit federal and nonfederal funds simultaneously. Most DSCC fundraising events are designed to raise both federal and nonfederal funds. When donors have reached their federal contribution limit, the DSCC frequently encourages them to make additional donations to the DSCC's nonfederal account. Also, on some occasions, particular DSCC activities are directed toward raising particular types of funds. For example, the DSCC's annual "Taste of the States" event has in the past been directed toward raising nonfederal funds. Examples of documents pertaining to past "Taste of the States" events are attached at Tab A.

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[A]25. DSCC fundraising employees assist Democratic Senators and Democratic Senate candidates in raising funds for the DSCC. For example, DSCC fundraising employees identify prospective donors for Democratic Senators and Democratic Senate candidates, and provide information that might be useful in the course of a solicitation. Examples of such information are attached at Tab B.

[A]26. Similarly, DSCC fundraising employees prepare letters for Senators' or candidates' signatures, thanking individuals for their donations or requesting support. An example of such a letter is attached at Tab C.

[A]27. The donors whom Democratic Senators contact on behalf of the DSCC are selected in a number of ways. Principally, they are selected based on their previous personal or political relationships with Democratic Senators. For example, the DSCC sometimes urges

a Democratic Senator to contact a particular donor because that donor had supported the Senator's previous campaigns, and thus might be likely to respond favorably to an appeal by that Senator to support the DSCC. Similarly, the DSCC sometimes urges a Democratic Senator to contact a particular donor from that Senator's home state. Senators sometimes request those who have made the maximum contribution to their campaign to contribute to the DSCC.

[A]28. Sometimes, the DSCC urges Democratic Senators to contact particular donors because of shared public policy views. For example, the DSCC has sought and received assistance from particular Democratic Senators in fundraising from the labor community or from women, because those Senators had a strong public record of support for these constituencies. Examples of documents reflecting such assistance are attached at Tab D.

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[C]32. The DSCC relies principally on Democratic Senate candidates and Democratic Senators to raise funds for its federal and nonfederal accounts. To a much lesser extent, it has relied on some occasions on other Democratic holders of Federal office.

[A]33. The DSCC enforces no quotas of funds to be raised by Democratic Senators. The amount of time each Senator spends raising funds for the DSCC varies from Senator to Senator, with the chair of the DSCC normally devoting the largest portion of time. However, on some occasions, the DSCC and its leadership request Senators to raise funds in specified amounts, or to devote specified periods of time to fundraising.

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[A]36. The DSCC encourages Democratic Senate candidates, Democratic Senators and other individuals to raise funds for its federal accounts through a "tally" program, in

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which the DSCC maintains a record of how much money each Democratic Senate candidate is credited with helping to raise for the DSCC. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate are spent for DSCC activities and programs as the DSCC determines within its sole discretion. Documents describing the DSCC's tally program are attached at Tab F.

[A]37. Sometimes, when a donor tallies a contribution to a Democratic Senate candidate, this reflects the fact that the candidate actively solicited the contribution. Also, donors sometimes tally contributions to candidates as a sign of tacit support for their candidacies, without the candidates' involvement.

[A]38. The DSCC encourages Democratic Senators, Democratic Senate candidates and others to raise funds for its nonfederal accounts by crediting their states for successful nonfederal fundraising. One incentive for their participation in the DSCC's nonfederal program is the prospect that the DSCC may allocate nonfederal funds to political party committees in their state. While the DSCC considers these recommendations, it also considers other factors including, but not limited to, the requirements of state law, the need of the nonfederal recipient, and the availability of funds. The DSCC spends all donations to its nonfederal accounts in its sole discretion. Documents describing fundraising for the DSCC's nonfederal program are attached at Tab G.

[A]39. As with tally, the DSCC maintains a record of the amount of nonfederal funds a Democratic Senate candidate's state is credited with having helped the DSCC to raise. On some occasions, this reflects the fact that the Democratic Senate candidate in that state actively solicited the donation. In other instances, a donor may credit his or her nonfederal donation to a particular state as a sign of tacit support for that state, or for that state's Democratic Senate candidate. Examples of records reflecting donations credited to various states are attached at Tab H.

[A]40. The DSCC maintains correspondence and check tracking forms for nonfederal donations credited to particular states. Examples of such documents are attached at Tab I.

[A]41. The DSCC regularly raises federal and nonfederal funds jointly with Democratic Senate candidates. The DSCC engages in joint fundraising for a number of reasons. For example, joint fundraising is an efficient way for multiple committees to raise funds from the same donor at the same event or as part of the same program. The DSCC understands 11 C.F.R. § 102.17 to require joint fundraising under such circumstances. Joint fundraising committees are closely associated with their participating Senate candidates, who are personally involved in raising funds for the committees.

42. On a few occasions, the DSCC has engaged in joint fundraising both with a Democratic Senate candidate and that candidate's state political party committee. However, the DSCC generally finds this not to be an efficient way of obtaining resources for state parties, because of the comparably small amounts of federal funds that state parties can raise under such arrangements.

43. The most common method of joint fundraising is for the DSCC to form a separate joint fundraising committee under FEC regulations with a Democratic Senate candidate. A joint fundraising committee collects and deposits contributions, pays related expenses, allocates proceeds and expenses to the participants, keeps required records, and discloses overall joint fundraising activity to the FEC.

44. The DSCC and the other participants in a joint fundraising committee agree to a formula for allocating proceeds and expenses. The formula ensures that each participant receives only those contributions that fall within its own source restrictions and contribution limits. It also ensures that each participant pays a share of the joint fundraising expenses that reflects the percentage it receives of the total funds raised.

[A]45. The allocation formula is determined by the priority the DSCC ascribes to funding the various participants, and by the operation of federal source restrictions and contribution limits. A typical joint fundraising allocation formula will allocate the first \$2,000 of every contribution from an individual to the participating candidate, with \$1,000 designated to the primary election and \$1,000 to the general election; and the next \$20,000 to

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the DSCC's federal account. Because the DSCC is normally the only participant eligible to receive nonfederal funds, any remaining amounts of an individual contribution will be allocated to the DSCC's nonfederal account, as will the entirety of any contribution from a federally prohibited source.

46. The DSCC and the other participants in a joint fundraising committee sign a written agreement naming the joint fundraising committee as their fundraising representative and stating the allocation formula. Examples of such written agreements are attached at Tab J.

47. A joint fundraising committee establishes separate bank accounts for joint fundraising receipts and disbursements. Each participant amends its statement of organization on file with the FEC to identify the accounts as among its designated depositories. A joint fundraising committee maintains federal accounts to accept funds consistent with the Act's source restrictions and contribution limits, and nonfederal accounts to accept other funds.

48. The joint fundraising committee notifies the public of the allocation formula in its solicitations. It also notifies donors of the right, notwithstanding the allocation formula, to designate any portion of a contribution to any one participant, to the extent permitted by law. Finally, it notifies donors that the formula may change if they make a contribution that would exceed the amount that could be received by any one participant. Examples of such notices are attached at Tab K.

49. The joint fundraising committee screens contributions and keeps records to ensure that the contributions received comply with applicable source restrictions and contribution limits. The participants report the proceeds allocated to them, itemizing each separate contribution. Expenses associated with the joint fundraiser are disclosed by the joint fundraising committee, allocated to each participant according to the formula, and are normally deducted from each participant's share of the proceeds.

[A]50. Funds raised for the DSCC through joint fundraising committees are frequently tallied to the participating Senate candidate, or credited to that candidate's state. The DSCC

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retains sole discretion over the use of funds, federal or nonfederal, distributed to it through joint fundraising. Similarly, the DSCC understands that the political committees and other organizations with which it participates in joint fundraising retain sole discretion over the spending of the funds they receive.

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52. The DSCC hosts several different types of events to motivate persons to donate funds. These events are often attended by Democratic Senators, Democratic Senate candidates, other Democratic holders of federal office, Democratic Cabinet officials and other celebrities who neither seek nor hold federal office.

53. At DSCC fundraising events, individuals who raise funds for or donate funds to the DSCC, including representatives of corporations, associations and labor unions, often interact directly with Democratic Senators, Democratic Senate candidates and other featured attendees. The nature and types of these interactions vary from event to event, and sometimes involve circumstances where individuals may have the opportunity to discuss policy matters with Senators and candidates

54. For example, donors and fundraisers sometimes attend receptions along with one or more Democratic Senators, followed by a dinner, and then by remarks from a Senator who serves as the featured guest. Similarly, donors and fundraisers sometimes attend breakfasts featuring remarks by Democratic Senators and Democratic Senate candidates. In these circumstances, donors and fundraisers have the opportunity to speak with Democratic Senators. Examples of materials related to such events are attached at Tab L.

55. DSCC fundraising events sometimes involve retreats in which a series of events are scheduled for donors, fundraisers, Democratic Senators, Democratic Senate candidates, and other featured guests. At such events, donors and fundraisers sometimes participate in group discussions with Democratic Senators, Democratic Senate candidates, and

other featured guests. At such events, donors and fundraisers also sometimes engage in recreational activities with Democratic Senators, Democratic Senate candidates, and other featured guests. Examples of materials related to such events are attached at Tab M.

56. The DSCC uses a variety of donor programs to motivate persons to donate funds. These programs tend to be associations of donors and fundraisers, who are grouped by the nature and extent of the funds given or raised. Examples of such programs, their qualifications for membership and the benefits offered to members are described in the documents attached at Tab N.

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[A]58. The DSCC frequently and in various ways acknowledges the efforts of those who donate or raise funds for it before Democratic Senators and other leaders of the Democratic Party. For example, the DSCC sometimes lists large donors in event programs and places placards on easels at fundraising events attended by Democratic Senators, acknowledging a donor's role in hosting, organizing or raising funds in connection with the event. Similarly, the DSCC may acknowledge donors and fundraisers in the program at an event attended by Democratic Senators, or on an invitation to the event.

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61. The DSCC makes donations from its nonfederal account to candidates for state and local office. Examples of letters that have accompanied such donations are attached at Tab P.

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64. The DSCC supports the activities of Democratic state political party committees in several ways.

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65. The DSCC transfers funds from its federal account to the federal accounts of Democratic state political party committees.

66. The DSCC transfers funds from its nonfederal accounts to the nonfederal accounts of Democratic state political party committees in the manner permitted by applicable law.

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68. The DSCC also supports Democratic state political party committees in producing and disseminating issue advocacy communications. In my experience, the large majority of the DSCC's nonfederal transfers to state and local party committees have been to support the nonfederal share of issue advocacy communications. Frequently, these communications refer to Democratic Senate candidates or their Republican opponents, while not expressly advocating any candidate's election or defeat. Examples of scripts for such communications are attached at Tab R.

69. In addition to supporting issue advocacy communications, the DSCC transfers federal and nonfederal funds to state and/or local party committees for voter identification, voter registration and get-out-the-vote efforts. These efforts have a significant effect on the election of federal candidates.

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[A]71. In deciding whether to support a particular state party committee in developing issue advocacy communications, the DSCC evaluates several different criteria. These include, but are not limited to, the DSCC's ability to provide nonfederal funds to the committee under applicable state law; the extent to which the audience in the state is likely to be receptive to a Democratic message; and whether such communications would be consistent with the political interests of the Democratic Party, including creating a favorable electoral environment for Democratic Senate candidates.

[A]72. When the DSCC transfers funds to state party committees, including nonfederal funds, for the purpose of disseminating issue advocacy communications, it first develops the communications in consultation with media consultants, who are generally retained by the state party at the request or suggestion of the DSCC, and then provides the communications to the state party, together with the necessary funds to distribute them locally. State parties may, but generally do not, reject the communications.

[A]73. The DSCC participates in the creative development of issue advocacy communications it supports, and works with consultants to determine their content, timing and placement. For example, the DSCC's political staff expresses views on questions of communications strategy. The DSCC's research staff reviews scripts of proposed communications in advance for accuracy, and the DSCC's legal counsel reviews them for legal compliance. The DSCC does not permit issue advocacy communications it supports to be recorded or produced until they have been approved by DSCC counsel and DSCC senior employees.

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[A]76. Currently the DSCC requires issue advocacy communications it supports to be controlled by the party. During my tenure at the DSCC, it has not supported the development of issue advocacy communications by media consultants also retained by the Democratic Senate candidates to whom, or to whose Republican opponents, the communications refer.

[A]77. A large majority of issue advocacy communications supported by the DSCC refer to Democratic Senate candidates in the states in which the communications are distributed, or to those candidates' Republican opponents. DSCC staff inform Democratic Senate candidates or those acting on their behalf of the DSCC's support for issue advocacy communications in their states.

78. The DSCC sometimes assists the DNC and DCCC in order to promote the interests of the Democratic Party as a whole, notwithstanding the fact that the DSCC remains a separate organization with discrete political objectives.

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80. The DSCC sometimes donates nonfederal funds to one of the other national political party committees.

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85. The DSCC hires employees with a variety of previous work experiences. In many instances, individuals work for the DSCC after having served on the campaign staff of a Democratic Senate candidate.

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FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 6, 2002.


James M. Jordan