PUBLICCITIZEN
215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Bundling for Favors:
Open the Books on Bundled Campaign Contributions

What Is bundling and Who Is a Bundler?

August 10, 2012—Bundling describes the activity of fundraisers who pool a large number of campaign contributions from political action committees (PACs) and individuals. Bundlers, who are often corporate CEOs, lobbyists, hedge fund managers or independently wealthy people, are able to funnel far more money to campaigns than they could personally give under campaign finance laws.

While there are disclosure requirements for bundling, they only go into effect only when (i) a bundler personally hands over checks, or (ii) a bundler is a registered lobbyist and meets specific fundraising thresholds. Most campaigns get around the disclosure provision by not having the bundler ever touch the checks or by having multiple lobbyists take credit for small portions of the bundled fundraising, thereby falling short of the disclosure threshold. Mandatory disclosure of all bundled contributions—regardless of whether the bundler touches them—is the very least we can do to address this new way to evade disclosure laws. Disclosure of bundling activity could be achieved either through a new law from Congress or by an improvement in Federal Election Commission (FEC) regulations.

Why Is Disclosure of Bundling Important?

Bundlers play an enormous role in determining the success of political campaigns and are apt to receive preferential treatment if their candidate wins. Bundlers who direct money to presidential candidates tend to be first in line for plum ambassador positions and other political appointments. Industry titans and lobbyists are more likely to receive preferential treatment from elected officials if they raised large amounts of money for them.

What Should Campaigns Disclose About Bundling and Bundlers?

Once campaigns make an oral or written agreement designating a person as a fundraiser and provide the fundraiser with some form of tracking mechanism, the campaign should be required to disclose the details of that person's fundraising success as part of the campaign's filings with the FEC. Disclosure reports on bundlers should contain the following:

- The name, address, occupation and employer of each bundler;
- Each contribution of more than $200 raised by the bundler;
- The original source and date of each contribution of more than $200 raised by the bundler; and
- Total contributions raised by the bundler for each reporting period.

This would open the books for all to see who raised large sums of campaign money for the candidate.

How Does the Law Define Bundling and What Disclosure Is Required by Law?

Federal Election Commission (FEC) regulations require some campaigns to disclose the names of bundlers as well as all the sources of bundled contributions if the bundler physically delivers the checks to the campaign. [11 CFR 110.6, implementing 2 USC 441a(a)(8)] This practice is known under FEC regulations as "earmarking" of campaign contributions through a "conduit" (i.e. bundler).

Under existing FEC regulations, an "earmarked" contribution is defined as:

- "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee."

A "conduit" is defined as:

- "any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee..."

Several exceptions are provided for the definition of a conduit or intermediary. For example, a fundraising representative of the campaign is not classified as a conduit, nor is a fundraising firm retained by the candidate.

Bundling by Lobbyists: New Disclosure Requirements in the Lobbying and Ethics Reform Bills.

As part of S. 1, the "Honest Leadership and Open Government Act of 2007," Congress passed legislation requiring campaigns to disclose the names and information of each

bundler-lobbyist. The new disclosure rules apply only to lobbyists—key players in the bundling and influence peddling game.

The bill requires candidates, officeholders and party committees to disclose in quarterly reports: 1) the name of each lobbyist who bundled $15,000 or more in a semi-annual period on behalf of the federal candidate or officeholder, leadership PAC, or political party; 2) a good faith estimate of the amount of bundled contributions collected within the quarter for each recipient.

"Bundled" contributions are defined in the House and Senate bills as any funds forwarded by a lobbyist to the candidate or committee, as well as any contributions raised at fundraising events or credited to the lobbyist by the candidate or committee through some form of tracking mechanism, such as a tracking number.

As useful as this lobbyist bundling disclosure requirement may be, bundling disclosure should apply to all fundraisers, not just registered lobbyists.

How to Fix the Law to Address Evasion of Bundling Disclosure Requirements.

One improvement would be to redefine "conduit" as:

- "any person who receives and forwards an earmarked contribution, or who receives oral or written accreditation from a donor as being responsible for a donor's reportable contribution of more than $200, to a candidate or candidate's authorized committee…"

Setting a threshold of reportable contributions more than $200 would provide a sufficient allowance for such fundraising events as rock concerts and would avoid hindering fundraising over the Internet or restricting fundraising activities of small-donor PACs and groups.

Achieving an effective mandatory disclosure requirement would also require narrowing the scope of exceptions to the definition of "conduit."

The key exception subject to abuse is that a "fundraising representative" so designated by a campaign is exempt from the definition of conduit. This is a reasonable exception for genuine fundraising officers and outside fundraising firms employed by a campaign, but the current regulatory language allows a campaign to designate anyone as a "fundraising

representative." For the purposes of capturing bundlers under the disclosure requirements who are not formal fundraising officers or firms of a campaign, a fundraising representative of a campaign should be defined as:

- "a person who is officially designated as a representative of the candidate by the campaign, and either (i) allocates at least 25 percent of a normal work-week on behalf of the campaign; or (ii) is retained at fair market value for fundraising."

Another improvement would be to rewrite the FEC rules on lobbyist-bundlers so that any lobbyist involved in a bundling effort take full credit for the bundled funds, rather than apportion low amounts of the fundraising among many lobbyists in order to evade the disclosure threshold. This would not alter the FEC reports on total funds raised by candidates, since the lobbyist-bundler schedule is separate from the rest of a candidate's report and serves only to identify those lobbyists who are active bundlers.

These new definitions of "conduit" and "fundraising representative," as well as the modification to lobbyist-bundler rules, could be achieved either by modifying FEC rules or by statutory changes.

What Should the Penalties for Bundling Disclosure Violations Be?

Violations of the bundling disclosure requirement would incur penalties under the law that governs disclosure in federal elections.

Any person who believes a reporting violation has occurred may file a complaint with the FEC. The FEC may allow the bundler to correct the reporting error or, if the Commission determines the violation was deliberate or egregious, may pursue civil actions against the bundler, subjecting the violator to a financial penalty in an amount determined under a schedule or penalties established by the FEC.

What's Happened to Disclosure of Bundling in Presidential Campaigns?

The Bush and Kerry campaigns evaded the disclosure regulation for earmarked contributions through the new style of bundling activity in which identification numbers are assigned to each bundler, who in turn ask contributors to write the bundler's ID number on the checks and then give the checks to the campaign on their own. This allowed the bundler to get credit from the campaign for the contributions, while sidestepping the FEC's official disclosure requirements.

Bundlers for the Bush camp who raised at least $100,000 through this method were given the honorary title of "Pioneer" and privileged treatment by the campaign committee.

One such solicitation letter by Bush Pioneer Thomas Kuhn, head of the Edison Electric Institute, the lobbyist group for much of the energy industry, read as follows:

"As you know, a very important part of the campaign's outreach to the business community is the use of tracking numbers for contributions. Both Don Evans [then chair of the campaign and current Secretary of Commerce] and Jack Oliver [then finance director of the campaign] have stressed the importance of having our industry incorporate the #1178 tracking number in your fundraising efforts."

Kuhn received credit from the Bush campaign for the contributions. President Bush soon afterward promoted the Clear Skies Act, an effort to weaken the Clean Air Act, advocated by Kuhn and the energy industry.[1]

In 2008, candidates Barack Obama and John McCain both voluntarily disclosed every bundler who raised over $50,000 for their campaigns. McCain's campaign released information about 851 bundlers, 77 of whom were registered lobbyists. Obama's campaign released information about 606 bundlers, 17 of whom were registered lobbyists.

However, in 2012, Republican Nominee Mitt Romney made an unprecedented decision *not* to release the names and information about each of his bundlers. The Romney campaign has only disclosed the names of his lobbyist-bundlers—as of July 16, 2012, 25 have raised over $3 million—and only because disclosure of lobbyist-bundlers is required by the 2007 ethics law.

Romney held a large, three-day gathering of all bundlers, providing them access to Romney's chief advisers, family members, and former Republican leaders like Strategist Karl Rove and former Secretary of State Condoleezza Rice.[2] Romney's largest lobbyist-bundler, who accounted for just under $1 million (nearly a third of all funds raised by lobbyists at the end of the GOP primary season), is Patrick J. Durkin, Sr., who lobbies for Barclays Bank. Barclays was recently investigated by the federal government for

[1] "Statement of EEI President Thomas Kuhn on the Need for Congressional Action on the Clear Skies Initiative," Edison Electric Institute (Sept. 16, 2003)
[2] Michael Bararo, *For Wealthy Romney Donors, Up Close and Personal Access*," NEW YORK TIMES (June 23, 2012)

manipulating the LIBOR, an interest rate that has wide-ranging impacts from student loan and credit card rates to mortgages.

Obama has again released information about all his bundlers raising more than $50,000 and made a pledge not to raise any money from registered lobbyists.