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COUNSEL

**FEDERAL ELECTION COMMISSION**

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In the matter of: Coburn for Senate Committee  
Wade A. Stubbs, Treasurer

MUR No: 5900

**COMPLAINT**

1. Citizens for Responsibility and Ethics in Washington ("CREW"), Melanie Sloan and Bruce Prescott bring this complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against the Coburn for Senate Committee ("Coburn for Senate") and Wade A. Stubbs, treasurer, for direct and serious violations of the Federal Election Campaign Act ("FECA").

**Complainants**

2. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws. Through its website, press releases and other methods of distribution, CREW also files complaints

with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities who violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual, candidate, political committee or other regulated entity is complying with federal campaign finance law, CREW needs the information contained in receipts and disbursements reports that political committees must file pursuant to the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. CREW is hindered in its programmatic activity when an individual, candidate, political committee or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated reports of receipts and disbursements are the only source of information CREW can use to determine if a candidate, political committee or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all reports of receipts and disbursements required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Melanie Sloan is the executive director of Citizens for Responsibility and Ethics in Washington, a citizen of the United States and a registered voter and resident of the District of Columbia. Bruce Prescott is a citizen of the United States and a registered voter and resident of Oklahoma. As registered voters, Ms. Sloan

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and Mr. Prescott are entitled to receive information contained in reports of receipts and disbursements required by the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Ms. Sloan and Mr. Prescott are harmed when a candidate, political committee or other regulated entity fails to report campaign finance activity as required by the FECA. See FEC v. Akins, 524 U.S. 11, 19 (1998), quoting Buckley v. Valeo, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Ms. Sloan and Mr. Prescott are further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting their ability to review campaign finance information.

#### Respondents

7. Thomas A. Coburn is a United States Senator representing Oklahoma. Coburn for Senate is the principal campaign committee for Sen. Coburn's 2004 campaign. Wade A. Stubbs is the treasurer of Coburn for Senate and served as treasurer at the time of the events described in this complaint.

#### Factual Allegations

8. Pursuant to its authority under the FECA, 2 U.S.C. § 438(b), the FEC conducted an audit of Coburn for Senate for its activities during the 2004 primary and general election. Federal Election Commission, Report of the Audit Division on On Coburn for Senate Committee, March 11 2004 – December 31, 2004 (January 9, 2007) (attached as Exhibit A). On January 9, 2007, the FEC approved the audit's findings and on January 25, 2007, released the audit's results to the public. Id.

9. The FEC determined that 18% of contributions aggregating \$200 or more made to Coburn for Senate were not itemized, in violation of 2 U.S.C. § 434(b)(3)(A).

Exhibit A at 4. Coburn for Senate amended its FEC reports to provide the identity of the contributors only upon learning of the FEC audit, after the 2004 general election. Id. at 4.

10. The FEC determined that Coburn for Senate failed to file 202 48-hour reports totaling \$349,100 in contributions, in violation of 2 U.S.C. § 434(a)(6)(A).

Exhibit A at 5. This constituted nearly 7% of Coburn for Senate's receipts for the entire 2004 election cycle. See Exhibit A at 2. Coburn for Senate acknowledged that it failed to file "several" 48-hour reports due to "inadequate staffing" and that it "understands the importance" of reporting last minute contributions subject to the 48-hour reporting law. Id. at 5.

#### COUNT I

11. The FECA requires the treasurer of each political committee to file reports of receipts and disbursements signed by the treasurer. 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Those reports must include any itemized contributions from persons other than any committees, including contributions from individuals in excess of \$200. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a)(4)(i).

12. Coburn for Senate shielded the identities of 18% of its 2004 contributors by failing to itemize contributor information in violation of 2 U.S.C. § 434(a)(2).

#### COUNT II

13. The FECA requires political committees that receive contributions in excess of \$1,000 between two and twenty days prior to an election to notify the FEC in writing within 48 hours. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f).

14. Coburn for Senate masked the identities of large last-minute contributors by failing to file 202 48-hour contribution notices in violation of 2 U.S.C. § 434(a)(6)(A).

## CONCLUSION

WHEREFORE, Citizens for Responsibility and Ethics in Washington, Melanie Sloan and Bruce Prescott request that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated federal campaign finance laws, demand that respondents submit amended reports of receipts and disbursements to report all expenditures, contributions and the identities of contributors as required by the FECA, impose sanctions appropriate to these violations and take such further action as may be appropriate.



ON BEHALF OF COMPLAINANTS

Melanie Sloan  
Executive Director  
Citizens for Responsibility and Ethics in  
Washington  
1400 Eye St, NW #450  
Washington, DC 20005  
(202) 408-5565

Verification

Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

  
\_\_\_\_\_  
Melanie Sloan

Sworn to and subscribed before me this 15 day of February, 2007.

  
\_\_\_\_\_  
Notary Public

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 15 day of February, 2007

  
\_\_\_\_\_  
Notary Public, D.C.

My commission expires June 30, 2011

NAOMI SELIGMAN STEINER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires June 30, 2011

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## **EXHIBIT A**



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

January 25, 2007

**MEMORANDUM**

**To:** Robert W. Biersack  
Press Officer

**From:** Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

**Subject:** Public Issuance of the Report of the Audit Division on Coburn for Senate Committee

Attached please find a copy of the audit report on Coburn for Senate Committee, which was approved by the Commission on January 9, 2007.

All parties involved have received copies of the report and the report may be released to the public.

Attachment as stated

**cc:** Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library  
DSDD Website ✓

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## Report of the Audit Division on Coburn For Senate Committee

March 11, 2004 – December 31, 2004

### Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### About the Campaign (p. 2)

Coburn for Senate Committee (CSC) is the principal campaign committee of Thomas A. Coburn, Republican candidate for the U.S. Senate from the state of Oklahoma and is headquartered in Muskogee, Oklahoma. For more information, see chart on the Campaign Organization, p.2.

### Financial Activity (p. 2)

• Receipts	
○ Individuals	\$ 3,898,597
○ Political Party Committees	65,144
○ Other Political Committees	793,488
○ Transfer From Other Authorized Committees	352,437
○ Refunds/Rebates	2,722
○ Total Receipts	\$ 5,112,387
• Disbursements	
○ Operating Expenditures	\$ 5,030,521
○ Contribution Refunds	19,100
○ Other Disbursements	7,500
○ Total Disbursements	\$ 5,057,121

### Findings and Recommendations (p. 3)

- Itemization of Contributions from Individuals (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Receipt of Contributions that Exceed Limits (Finding 3)

<sup>1</sup> 2 U.S.C. §438(b).

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## **Part I Background**

### **Authority for Audit**

This report is based on an audit of Coburn for Senate Committee (CSC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

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## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	<b>Coburn for Senate committee</b>
• Date of Registration	March 16, 2004
• Audit Coverage	March 11, 2004 – December 31, 2004
<b>Headquarters</b>	Muskogee, Oklahoma
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	1 Checking
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Wade A. Stubbs
• Treasurer During Period Covered by Audit	Wade A. Stubbs
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ March 11, 2004</b>	<b>\$ 0</b>
o Individuals	3,898,5979
o Political Party Committees	65,144
o Other Political Committees	793,488
o Transfers From Other Authorized Committees	352,437
o Refunds/Rebates	2,722
<b>Total Receipts</b>	<b>\$5,112,387</b>
o Operating Expenditures	5,030,521
o Contribution Refunds	19,100
o Other Disbursements	7,500
<b>Total Disbursements</b>	<b>\$5,057,121</b>
<b>Cash on hand @ December 31, 2004</b>	<b>\$ 55,266</b>

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## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Itemization of Contributions from Individuals**

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of such contributions which aggregated in excess of \$200 were not itemized on CSC's reports. CSC filed amended reports which materially corrected the itemization errors. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated that it has instituted procedures to prevent similar issues in future reporting. (For more detail, see p. 4)

##### **Finding 2. Failure to File 48-Hours Notices**

CSC failed to file 48-hour notices for 202 contributions totaling \$349,100. The Audit staff recommended that CSC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response, CSC stated that they have restructured their staff and procedures to ensure future compliance. (For more detail, see p. 5)

##### **Finding 3. Receipt of Contributions that Exceeds Limits**

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated it has instituted procedures to ensure that excessive contributions are handled timely. (For more detail, see p. 6)

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## Part IV

# Findings and Recommendations

### Finding 1. Itemization of Contributions from Individuals

#### Summary

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of such contributions which aggregated in excess of \$200 were not itemized on CSC's reports. CSC filed amended reports which materially corrected the itemization errors. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated that it has instituted procedures to prevent similar issues in future reporting.

#### Legal Standard

**When to Itemize.** Authorized candidate committees must itemize:

- Any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when aggregated with other contributions from the same contributor; and
  - Every contribution from any political committee, regardless of the amount
- 2 U.S.C. §434(b)(3)(A), (B) and (D).

**Definition of Itemization.** Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- Election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

#### Facts and Analysis

Contributions received from individuals were reviewed on a sample basis. The review indicated that approximately 18% of the contributions which aggregated in excess of \$200 were not itemized on CSC reports. After CSC received notice of the audit, it filed amended reports. These amendments materially corrected the itemization errors.

This matter was discussed at the exit conference. CSC representatives stated it changed to a different software application during the campaign and much of the data was omitted by the input staff, thereby, affecting contributions requiring itemization.

#### Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that CSC submit any written comment it considers relevant.

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CSC stated that prior to the arrival of the Audit staff; the Committee conducted its own internal audit, then corrected and amended all reports. This was done to expedite the FEC audit process and in the interest of full disclosure, to correct the public record as soon as possible. Further, CSC instituted procedures to prevent similar issues in future reports.

## **Finding 2. Failure to File 48-Hour Notices**

### **Summary**

CSC failed to file 48-hour notices for 202 contributions totaling \$349,100. The Audit staff recommended that CSC provide evidence that the 48-hour notices were timely filed or submit any written comments it considers relevant. In response, CSC stated that they have restructured their staff and procedures to ensure future compliance.

### **Legal Standard**

**Last-Minute Contributions (48-Hour Notice).** Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

### **Facts and Analysis**

The Audit staff reviewed contributions of \$1,000 or more that were received during the 48-hour notice filing periods for the primary and general elections. CSC failed to file 48-hour notices for 202 contributions totaling \$349,100; (13 contributions totaling \$29,500 during the primary election, and 189 contributions totaling \$319,600 during the general election). CSC indicated that the failure to file these 48-hour notices were an oversight due to inadequate staffing.

### **Interim Audit Report Recommendation and Committee's Response**

The Audit staff recommended that CSC provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considers relevant.

CSC acknowledged that it failed to file several 48-hour notices. CSC stated it understands the importance of the 48-hour notices and has restructured its staff and procedures to ensure future compliance in filing all reports.

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### **Finding 3. Receipt of Contributions that Exceed Limits**

#### **Summary**

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. The Audit staff recommended that CSC submit any written comments it considers relevant. In response, CSC stated it has instituted procedures to ensure that excessive contributions are handled timely.

#### **Legal Standard**

**A. Authorized Committee Limits:** An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 from a multi-candidate political committee per election. 2 U.S.C. §441a(a)(1)(A), 11 CFR §§110.1(a) and (b) and 110.2(a) and (b).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

#### **Facts and Analysis**

CSC accepted contributions from political action committees that exceeded the limitation by \$22,100. All of the excessive contributions were refunded; however, the refunds were not timely. CSC did not deposit the excessive portions into a separate account but did maintain sufficient funds to make the necessary refunds. This matter was discussed at the exit conference. In response, CSC reiterated that refunds were made but not within the required number of days.

#### **Interim Audit Report Recommendation and Committee's Response**

The Audit staff recommended that CSC submit any written comments it considers relevant. CSC stated that it has instituted procedures to ensure that excessive contributions are handled timely.

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