



INDECENT DISCLOSURE

PUBLIC ACCESS TO INDEPENDENT EXPENDITURE INFORMATION
AT THE STATE LEVEL

By
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The National Institute on Money in State Politics is a nonpartisan 501(c)3 tax-exempt charitable organization dedicated to accurate, comprehensive and unbiased documentation and research on campaign finance at the state level. It compiles campaign-contribution information on every state-level candidate, major party committee and non-bond ballot measure committee in the country.

*The Institute serves as the nation's only complete source of this data and makes its information freely available online at **www.FollowTheMoney.org**.*

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EXECUTIVE SUMMARY

In the wake of states enacting campaign contribution limits and other election reforms, independent expenditures (IEs)¹ have become more prevalent in high profile state races over the past few election cycles. As part of an effort to identify states where IEs played a major role during the 2006 election cycle, the Institute first surveyed the availability of IE data in the 50 states — and were shocked.

Previous reports indicate that 39 states have enacted statutory reporting requirements for state-level IEs,² but only five of those states make such information available in comprehensive and relevant formats to the public, news media, academic researchers and other interested parties. While most states have enacted IE disclosure statutes, holes in the laws — combined with an apparent failure of state campaign-finance disclosure agencies to administer effectively those laws — results in the poor public disclosure of independent expenditures. The result is that millions of dollars spent by special interests each year to influence state elections go essentially unreported to the public. IEs form the single-largest loophole in the laws and administrative procedures implementing transparency in state electoral politics.

Shortfalls in disclosure include: IE disclosure reports may be required but the reports do not identify the "target" of the IE. Or, the "target" may be identified but not whether the expenditure was made in support of or opposition to the target. In some states, the Institute found that the IE information was reported by political committees along with their regular expenditures with no way to either identify what was an IE as opposed to any other category of expenditures made by the committees. In other states, the IE information was collected but then not segregated or flagged in any manner; in order to find the information, one would have to travel to the offices of the state disclosure agencies to review tens of thousands of committee reports manually to look for this information. Other states have the data included in their electronic databases without the ability to identify IE from other types of expenditures.

This report discusses problems with obtaining meaningful IE data from the various state disclosure agencies, presents an example of an often-used loophole in IE disclosure laws used to hide funders, and makes recommendations for effective IE reporting and disclosure by the states.

¹ Expenditures made by persons (an individual or other entity) to advocate expressly for the election or defeat of a clearly identified candidate(s) or the qualification, passage or defeat of a ballot measure(s), but which are not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, political committee, or agent of a candidate or political committee.

² "Grading State Disclosure – 2005. Evaluating States' Efforts to Bring Sunlight to Political Money," *Campaign Disclosure Project* [on-line]; available from <http://www.campaigndisclosure.org/gradingstate/execsum.html>; Internet; accessed July 18, 2007. Note: The referenced report lists 40 states with IE disclosure laws; however, Illinois has electioneering expenditure reports which are not necessarily "independent" and therefore we have not included Illinois as having IE disclosure requirements.

INTRODUCTION

In an effort to limit the increasing costs of campaigns, as well as the potential for corruption in state politics, many states have enacted laws limiting campaign contributions. Experience has shown, however, that when a law limits contributions from one source, loopholes are often found that bring entirely new sources of revenue into existence.

Currently, independent expenditures (IEs) are the largest loophole contributors use to circumvent state limits on direct campaign contributions. In most states, individuals, political action committees (PACs), ideological organizations, and even some corporations and unions can spend unlimited amounts of money for IEs supporting or opposing particular candidates, as long as these expenditures are not coordinated with the candidates they are benefiting. Other times, such groups will attack or praise candidates without expressly urging support or opposition at the polls in an attempt to evade enforcement of reporting and disclosure laws.

In an effort to determine the role IEs played in state elections during the 2005-2006 election cycle, the Institute surveyed the status of IE reporting in the states with an eye to identifying several from which to collect data and analyze IEs in those states' elections. The results of the survey are actually more staggering than the actual data we were able to glean from disclosure reports.

In order for IEs to be effectively disclosed by states,

- information about the entity(ies) making such expenditures must be detailed (including name, address and, for individuals, occupation and employer);
- the entity(ies) contributing funds used to make the IEs must be named (including name, address and, for individuals, occupation and employer);
- the entity(ies) receiving payments that represent the actual IEs must be identified (including detailed purpose of the expenditure, name, address, type of business or, for individuals, occupation and employer);
- the target (candidate or ballot measure) of each IE must be identified along with whether the IE supported or opposed that target.
- In addition, this information must be obtainable from the state disclosure agency without the need to review thousands of campaign finance documents line-by-line on-line or on-site at state disclosure agencies.

While 39 states have laws defining independent expenditures and requiring entities (individuals and/or organizations) to report them, only five states currently have effective disclosure of this information to the public — as measured by the criteria above. In essence, information on who is spending unlimited funds to influence state-level campaigns is virtually a secret in the vast majority of states.

STATES WITH EFFECTIVE INDEPENDENT EXPENDITURE DISCLOSURE

The five states that currently provide the public with reasonably effective disclosure of IEs made during the 2005-2006 election cycle are Alaska, California, Colorado, Maine and Washington. While only Maine requires a separate IE report that is easily identifiable and viewable in its entirety on-line, the four other states use their regular campaign disclosure reports to collect and store IE information in such a way that it can be accessible. Each of those four states rely heavily on electronic reporting and fairly sophisticated electronic databases that can retrieve the data. Still, it took some effort on the part of experienced Institute staff who are well-trained in collecting campaign-finance data for the Institute to extract and evaluate the IE information from those states' databases. It would be more difficult for a member of the public to do so.

Colorado, for example, has very strong constitutional and statutory requirements regulating IEs, but there are no separate IE reports filed with the state. Committees (candidate, political, party, small donor) file IE information as part of their regular campaign disclosure reports. (Political committees are defined in the Colorado Constitution as “any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.”) Since these committees also must file a "Notice of Independent Expenditure" (NIE), which the state makes available online, a person is able to acquire a list of committees whose regular reports contain IEs and then review those reports in more detail to gather the IE information. However, obtaining the electronic data with this information was not a simple process. The Institute was required to order a specialized database that cost \$560, which would significantly limit general-public access to this information.

All entities in Colorado must also file “Electioneering Communications” reports when contributions or expenditures in excess of \$200 are made for print, radio, TV and other election communications that unambiguously refer to any candidate and are distributed within 30 days of a primary or 60 days of a general election. The Institute plans to compare these reports to determine if these reports, when used in combination with the regular finance reports, will provide additional disclosure of the IEs in Colorado.

Specific information on how to obtain IE data in these five states is found in Appendix A-1 on page 18.

STATES WITH NO INDEPENDENT EXPENDITURE LAWS

Currently 11 states do not require reporting of IEs in their state campaign-finance statutes: Alabama, Illinois, Indiana, Maryland, New Mexico, New York, North Dakota, South Dakota, Tennessee, Vermont and Wyoming.

This is not surprising in five of the states — Alabama, Illinois, Indiana, New Mexico and North Dakota. Because those states do not limit contributions by individuals and PACs to candidates,³ there is not much impetus to circumvent limits on direct contributions through IEs. However, Maryland, New York, South Dakota, Tennessee, Vermont and Wyoming do have campaign-contribution limits, along with the inevitable pressure to evade those limits that creates more opportunities for IEs to become an important component of financing elections. Effective disclosure of the special interests that fund IEs in those states would dramatically increase the transparency of politics in these states.

While **New York** does not have a specific law requiring reporting of IEs, all political committees supporting or opposing candidates/issues must file reports with the State Board of Elections indicating whether the committees are authorized or not authorized by the candidate or issue committees and they must also file regular campaign finance reports. Those “unauthorized” committees formed to elect or defeat a candidate or measure would be making independent expenditures. New York stores their campaign-finance data in an electronic database and the public accesses this information on-line. However, the state has no “indicator” or field in that database to show whether the committees are either “authorized” or “unauthorized” and they do not have a hard copy list of such committees. When these reports are filed, they are simply placed in a folder without noting the status of the committee in the database or anywhere else. The Institute requested a list but the New York State Board of Elections refused to develop one because they “do not have the staff or the time to go through thousands of files.”⁴

Illinois has no specific definitions and requirements for reporting IEs; however, there are laws requiring reporting of electioneering communications and requiring nonprofit organizations to register and file disclosure reports if they accept contributions, make contributions or make expenditures in excess of \$5,000 during any 12-month period on behalf of or in opposition to public officials, candidates or a question of public policy, or for electioneering communication

Another eight states with no limits on campaign contributions require IE reporting in their statutes, but the information reported is not reasonably available to the public. Other times, reports filed are lacking critical information resulting in poor-quality information.

³ “Contribution Limits,” *National Conference of State Legislatures* [on-line]; available from <http://www.ncsl.org/programs/legismgt/about/ContribLimits.htm>; Internet; accessed July 18, 2007.

⁴ Email correspondence with New York Board of Elections, Albany, NY, March 29, 2007. Full text in Appendix B, page 25.

INDEPENDENT EXPENDITURE DISCLOSURE INFORMATION FILED BUT UNAVAILABLE

It is extremely difficult or impossible to obtain IE information in 25 of the 39 states with IE disclosure laws currently in force. Generally, the problems revolve around the lack of requirements for separate IE reports or the failure to make them publicly available once filed. Failure of state disclosure agencies to maintain and provide a list of filers often leads to the "needle in the haystack" approach to locating IEs. Without knowing the names of committees filing reports containing the IE expenditures, it is impossible to request copies of the reports from disclosure agencies.

For example, **Pennsylvania** campaign-finance law requires IEs to be reported on a special IE Report (DSEB Form 505), which can be ordered from the state at \$0.25 per page. The problem is that one can not tell from the state's Web site which committees have filed these reports. The Campaign Finance Office at the Pennsylvania Department of State has no list of such committees and, therefore, cannot locate and make copies of the reports for anyone,⁵ making the data all but inaccessible.

In **Nebraska**, any person or organization spending money to influence an election must file a campaign-finance report; IEs must be reported as such, along with identification of the candidate or ballot measure affected and whether the expenditure was made in support or opposition. Only individuals are required to file a separate IE report and only one individual correctly filed such a report during the 2006 election cycle. The remainder of the IEs made during the cycle are buried somewhere within the regular campaign-finance reports filed by committee filers. However, the Nebraska Accountability and Disclosure Commission does not identify which of the reports contain IEs. When the Institute asked the Commission to query their database to identify specific entries in order to identify which committees had reported making IEs, the Institute was told that the Commission does not have the ability to query their database for this information and do not have time to look at the reports manually, but welcomes others to do so.⁶ This would require obtaining a comprehensive list of committees who have filed campaign finance reports (which are not available online), reviewing thousands of filers to find out which filed reports for the year in question, and then reviewing each of their expenditures line-by-line to determine if any IEs had been made so that copies of those particular reports could be printed.

The specific problems with obtaining IE data are summarized for each of these 25 states in Appendix A-2 on page 19.

⁵ E-mail correspondence with Campaign Finance division, Pennsylvania Department of State, Harrisburg, PA, April 25 2007. Full text of e-mail appears in Appendix C, page 26.

⁶ E-mail correspondence with Nebraska Accountability and Disclosure Commission, Lincoln, NE, April 4 2007. Full text of e-mail appears in Appendix D, page 27.

INDEPENDENT EXPENDITURE DISCLOSURE REPORTS LACK ESSENTIAL INFORMATION

In eight states with IE disclosure laws in force, the reports filed lack essential information — such as whether the expenditure was made in support of or in opposition to a candidate or ballot measure, the name(s) of the candidates or ballot measures affected, or who contributed funds used to fund the IEs — required to disclose such expenditures effectively. These eight states are Arizona, Arkansas, Georgia, Hawaii, Idaho, Massachusetts, Ohio and West Virginia.

Arkansas is a good example of this problem. IE committees are required to register and file separate IE reports, which are available to the public. These reports show who contributed to the committees and how the committees spent their funds (e.g., radio ad, television ad, flyers, etc.), but do not identify the candidates or measures that were either supported or opposed. The result is simply a list of money in and money out to media consultants and media outlets.

In **Ohio**, where no separate IE reports are filed, regular committees indicate on their campaign finance disclosure reports that a particular expenditure (such as a media consultant's fee or postage and printing costs) is an IE, but no information is given as to who or what the target(s) of the IE is or whether the IE is supporting or opposing the target. Separate reports are also required to be filed for electioneering communications activities (attack or support ads that mention a clearly identifiable candidate but do not urge voters to support or oppose a candidate at the polls); however, the reports list only the name(s) of the candidates/issues mentioned in the ads and not the position taken supporting or opposing the target(s). While several IEs were incompletely identified in PAC reports, none of those PACs filed separate electioneering communications reports giving further detail on those IEs.

Other specific problems identified in these eight states are summarized in Appendix A-3 on page 22.

LOOPHOLES WITHIN THE LOOPHOLE

Even in states with high campaign-contribution limits, special interests determined to evade those limits find ways around public disclosure of their IEs in order to hide the identity(ies) of funders.

An often-used ploy is to form two separate committees — often a 501(c)4 social welfare nonprofit corporation and a subsidiary electioneering committee that makes the media purchases and files campaign finance reports with the disclosure agencies. The nonprofit is not required to disclose its donors publicly on its annual tax return. If the parent nonprofit does not directly expend political funds, it is not required to file campaign-finance reports. Instead, the parent nonprofit passes the funds it raises for the IE effort on to its subsidiary electioneering committee, which then pays for the ad campaigns and files campaign-finance reports with the state disclosure agency. These reports disclose only that their contributions came from the parent nonprofit. Thus, unlimited amounts of money can be “passed-through” the parent organization to influence electoral politics without disclosing the names of any individual contributors to these efforts.

COMMON SENSE OHIO AND CARL LINDNER JR.

While this scenario is most often used in federal elections,⁷ a high-profile example of this strategy occurred at the state level during the 2006 election cycle in Ohio’s gubernatorial race, and illustrates that this loophole is also a significant issue at the state level. Carl Lindner Jr., a wealthy Cincinnati financier and top contributor to Republican candidates and causes, was a major funder of Common Sense Ohio,⁸ which ran a \$2 million IE campaign through its political arm, Common Sense 2006, to attack the Democratic gubernatorial candidate. Lindner’s contributions to Common Sense Ohio were made after having contributed the maximum allowed by state law to Republican gubernatorial candidate Blackwell’s campaign, to the state and local Republican parties, and to PACs also supporting Blackwell. Because Common Sense Ohio passed these contributions to their electioneering committee, Common Sense 2006, the parent committee’s individual contributor(s) are hidden at the state level, making it impossible to determine the exact amount of Lindner’s contributions to Common Sense Ohio’s state-level effort.

In Ohio, the Secretary of State administers both elections and campaign-finance reporting by political committees and disclosure to the public. Ohio PACs and Political Contributing Entities (PCEs) are required to file regular campaign-finance disclosure reports. They must also file election communications reports if they pay for independent electioneering communications. Individual persons (aged 7 and over) may make contributions to candidates of no more than \$10,000 per campaign period (e.g., primary election and general election are separate campaign periods with the \$10,000 limit applying separately to each period); individual contributions to PACs are limited to \$10,000; PACs are limited to contributing \$10,000 per election to candidates; and direct corporate and union contributions are prohibited.

During the 2006 general election cycle, then-incumbent Secretary of State J. Kenneth Blackwell, a Republican, was in a hotly contested general election gubernatorial race with then-incumbent U.S. Rep. Ted Strickland, a Democrat. In mid-August 2006, a group calling itself Common Sense 2006 began running an extensive series of attack ads against Strickland on television and radio and in newspapers across the state.

⁷ Stephen R. Weissman and Kara D. Ryan, “Soft Money in the 2006 Election and the Outlook for 2008 – The Changing Nonprofits Landscape,” *Campaign Finance Institute* [on-line]; available from http://www.cfinst.org/books_reports/pdf/NP_SoftMoney_06-08.pdf; accessed July 18, 2007.

⁸ *Ibid.*, pp. 8 and 14. The Campaign Finance Institute reports Lindner contributed at least \$479,224 to Common Sense Ohio’s federal IE expenditures in U.S. Senate elections in several states.

Election communications reports filed by Common Sense 2006 with the Secretary of State⁹ reported the group spent nearly \$2 million on ads naming Blackwell and Strickland between Aug. 16 and Oct. 5, 2006. All payments were made to Design 4 Advertising of Brandon, Fla. Contributions totaling \$1,952,500 were reported from “Common Sense Ohio, an MCFL Corporation,” and another \$70,000 from the Republican Governors Public Policy Committee. Harold Smith and Douglas Robinson are listed as “persons sharing control or exercising direction” of Common Sense 2006 and Susan Carson is named as “custodian of books and accounts” on those reports.

Common Sense 2006 filed electioneering communications reports with the state, but no other regularly required campaign-finance reports for PACs and PCEs making IEs.

The parent group, Common Sense Ohio had filed as a nonprofit corporation with the Ohio Secretary of State on July 11, 2006. Directors of the corporation were listed as Harold “Zeke” E. Swift, Burr Robinson, and John T. Lind (treasurer). The incorporating papers were submitted by William M. Todd, their legal counsel from his offices at Squire, Sanders & Dempsey.¹⁰ On Aug. 18, 2006, immediately prior to the start of the attack ads, Common Sense Ohio amended its filing, naming Nathan Estruth as president and amending their charter.¹¹

Much later in November and December of 2007, reports filed by parent group Common Sense Ohio with the Federal Elections Commission (due to involvement in a U.S. Senate race) omit Swift and Robinson’s names and lists Nathan Estruth, John Lind, and Lance McAlindon as persons “sharing/exercising control.”¹²

The two directors of Common Sense Ohio, the parent 501(c)4, are the same persons listed on electioneering communications reports filed by Common Sense 2006 as persons responsible for the attack ads. William (Bill) Todd, legal counsel to Common Sense Ohio, is also counsel to the Ohio Chamber of Commerce’s Citizens for a Strong Ohio (the group that ran the notorious “Lady Justice” attack ads against state Supreme Court Justice Alice Robie Resnick¹³ and counsel for Informed Citizens of Ohio, which ran adds supporting Republican state Supreme Court candidates. Both organizations used similar strategies to secretly raise and funnel millions of dollars in predominately corporate contributions into Ohio Supreme Court elections.¹⁴

⁹ See “2006 Electioneering Communications Reports,” *Ohio Secretary of State* [on-line]; available from http://www1.sos.state.oh.us/pls/portal/PORtal_CF.CF_EC_QRY_FILED_BY_PAC.show?p_arg_names=electon_key&p_arg_values=19854; Internet; accessed July 18, 2007.

¹⁰ “Business Filing Information,” *Ohio Secretary of State* [on-line]; available from http://www1.sos.state.oh.us/pls/portal/PORtal_BS.BS_QRY_BUS_FILING_DET.SHOW?p_arg_names=charterr_num&p_arg_values=1634515; Internet; accessed July 18, 2007.

¹¹ *Ibid.*

¹² “Electioneering Communications Reports,” *Federal Election Commission* [on-line]; available from http://www.fec.gov/finance/disclosure/ec_table.shtml; Internet; accessed July 18, 2007.

¹³ Jim Provance, “Ohio Chamber Reveals Contributors - Businesses Spent \$4.2 Million in 2000 Effort to Unseat Justice Resnick,” *Toledoblade.com* [on-line]; available from <http://toledoblade.com/apps/pbcs.dll/article?AID=/20050129/NEWS09/501290367>; Internet; accessed July 18, 2007.

¹⁴ Ted Wendling, “Take a Number: Dems Sue Blackwell,” *The Plain Dealer*, Sept. 7, 2006 [on-line]; available from http://www.cleveland.com/weblogs/openers/index.ssf?/mtlogs/cleve_openers/archives/2006_09.html#180690; Internet; accessed July 18, 2007.

Design 4 Advertising, headed by Clint Cline, the firm that designed and ran the attack ads paid for by both Common Sense 2006 and Common Sense Ohio, is the same firm that handled media and telephone polls advocating Ohio's same-sex marriage amendment¹⁵ in 2004 for the "Ohio Campaign to Protect Marriage – A project of Citizens for Community Values," which also did not disclose their donors in that IE campaign effort.¹⁶

In an effort to force disclosure of contributors to Common Sense Ohio (the parent nonprofit group), the Ohio Democratic Party filed a complaint with the Ohio Supreme Court against Secretary of State Blackwell for failure to uphold the disclosure requirements in state campaign-finance law. In a 4-3 decision, the Court ruled that it lacked subject-matter jurisdiction to determine whether provisions of state laws had been violated because state statutes confer on the Ohio Elections Commission exclusive original jurisdiction to determine whether "acts or failures to act" in the area of campaign finance reporting constitute violations of statutory disclosure requirements.¹⁷ In Ohio, the Elections Commission issues advisory opinions and serves as a type of "grand jury,"¹⁸ usually releasing such opinions after elections have occurred.

It was only through the involvement of these same two groups in several U.S. Senate races in 2006 that a glimpse was provided into the funding of the IEs in Ohio. In the waning days before the general election, a media purchase made directly by Common Sense Ohio for a U.S. Senate race in Montana resulted in Common Sense Ohio (the parent nonprofit group) being required to file two electioneering reports with the Federal Elections Commission. While such reports require disclosure only of the person(s) financing the electioneering communication (and not all organizational donors), the sole contributor listed on those reports was Carl Lindner Jr.

¹⁵ Sue O'Connell, "The Money Behind the 2004 Marriage Amendments," *National Institute on Money in State Politics*; [on-line]; available from <http://www.followthemoney.org/press/Reports/200601271.pdf>; Internet; accessed April 18, 2007.

¹⁶ Citizens for Community Values (Phil Burrell, president), Clint Cline and Blackwell were members of the Arlington Group in 2004, when the group's members and affiliate organizations were key promoters of state measures banning same-sex marriages. Blackwell is no longer listed on the Arlington Group letterhead as of January 2007.

¹⁷ "State ex rel. Ohio Democratic Party v. Blackwell, 111 Ohio St.3d 246, 2006-Ohio-5202," *Supreme Court of Ohio* [on-line]; available from <http://www.supremecourtsohio.gov/rod/newpdf/0/2006/2006-Ohio-5202.pdf>; Internet; accessed July 18, 2007.

¹⁸ "History," *Ohio Elections Commission* [on-line]; available from <http://elc.ohio.gov/History.stm>; Internet; accessed July 18, 2007.

Direct contributions to candidates in the 2006 Ohio gubernatorial race from the individuals (and their family members) whose names are linked to the IEs made by the Common Sense committees include:

NAME	CONNECTION TO COMMON SENSE OHIO	GUBERNATORIAL CANDIDATE SUPPORTED	DIRECT CONTRIBUTION
Lindner, Jr., Carl	Sole contributor listed on FEC report	Blackwell	\$20,000
Lindner, Edyth (sometimes reported as Edith Lindner)	Spouse of Carl Lindner, Jr.	Blackwell	20,000
Lindner, Betty	Spouse of Robert Lindner, Sr.	Blackwell	10,000
Lindner III, Carl	Son of Carl Lindner, Jr.	Blackwell	10,000
Lindner, Charlene	Relative of Richard Lindner	Blackwell	1,200
Lindner, Courtney	Spouse of Keith Lindner	Blackwell	10,000
Lindner, Frances	Spouse of S. Craig Lindner	Blackwell	10,000
Lindner, Keith	Son of Carl Linder, Jr.	Blackwell	10,000
Lindner, Martha	Spouse of Carl Linder III	Blackwell	10,000
Lindner, Richard	Brother of Carl Lindner, Jr.	Blackwell	10,000
Lindner, Sr., Robert	Brother of Carl Lindner Jr	Blackwell	10,000
Lindner, Jr., Robert	Son of Robert Lindner	Blackwell	1,000
Lindner, S. Craig	Son of Carl Lindner, Jr.	Blackwell	10,000
SUBTOTAL			\$132,200
Estruth, Madonna	Spouse of President	Blackwell	\$10,000
Estruth, Nathan	President	Blackwell	7,500
Robinson, Douglas Burr	Director	Blackwell	5,500
Swift, Harold "Zeke"	Director	Blackwell	1,000
William (Bill) Todd	Legal Counsel	Blackwell	650
SUBTOTAL			\$24,650
TOTAL			\$156,850

In addition to his contributions to Blackwell, Carl Lindner Jr. contributed \$1,148,000 to the Ohio Republican Party (including both administrative and campaign funds) and affiliated legislative campaign committees and another \$15,000 to the Hamilton County Republican State Candidate

Fund. His wife, Edyth, contributed \$55,000. Other family members (including his siblings, children, nieces and nephews, and their spouses) donated another \$247,500.

Contributions to PACs made by Lindner and his wife during this same time period included:

PAC NAME	CONTRIBUTION
Citizens for Community Values Action ¹⁹	\$ 15,000
Family First ²⁰	10,000
TOTAL	\$25,000

After the Lindners' contributions on July 20, 2006, Citizens for Community Values Action PAC (CCV) contributed \$20,000 to Blackwell's campaign committee on July 25, 2006. On Oct. 17, 2006, CCV refunded the Lindner's \$15,000 with a notation that "Donation not used for purpose intended." Family First made a \$2,000 contribution to Blackwell's campaign and also made a \$6,000 IE, but the purpose of the IE is not disclosed on Ohio campaign-finance reports so there is no way of knowing which candidate may have benefited from the IE.

Finally, reports show that Carl Lindner Jr. made the following contributions to Ohio ballot measure committees during 2005 and 2006:

BALLOT COMMITTEE NAME	AMOUNT
Ohio First Voter Education Fund, Inc	\$500,000
Jobs for 2005	100,000
Vote No Casinos ²¹	600,000
TOTAL	\$1,200,000

William (Bill) Todd is legal counsel to Ohio First Voter Education Fund, Inc.²² as well as Common Sense Ohio. The Ohio First group filed as a nonprofit corporation with the Ohio Secretary of State and as a 527 federal political organization with the Federal Elections Commission. The group raised over \$5.2 million primarily from corporate donors to oppose campaign reform Issues 2-5 on the 2005 Ohio ballot.

During the 2005-2006 election cycle, Carl Lindner Jr. personally made \$1,886,500 in reported campaign contributions to state candidates, political party, ballot measure, and PAC committees in Ohio.²³ Lindner's family members contributed another \$602,900 in direct support of Ohio state candidates and political party activities.

Given the fact that Mr. Lindner was the sole benefactor of Common Sense Ohio's federally disclosed electioneering communications expenditures, it is quite possible that he was a major benefactor of their undisclosed state IEs. The public will never know as long as states allow these

¹⁹ Carl Lindner contributed \$5,000 and Edyth Lindner contributed \$10,000.

²⁰ Carl and Edyth Lindner each contributed \$5,000.

²¹ \$100,000 of this contribution was later refunded to Lindner.

²² "About Bill Todd," *Bill Todd for Mayor of Columbus* [on-line]; available from <http://www.votebilltodd.com/about.php>; Internet; accessed April 18, 2007.

²³ \$100,000 of Lindner's contribution to a ballot measure committee and a \$5,000 contribution to a PAC were later refunded.

reporting loopholes to exist and their campaign-finance agencies fail to effectively disclose the IE information that is required by state law.

PRINCIPLES OF EFFECTIVE DISCLOSURE

Providing clear and effective disclosure of IEs requires both a comprehensive state disclosure law and an effective campaign-finance administration. States with no IE reporting and disclosure laws should include a review of the strengths and weaknesses of IE disclosure laws in other states when crafting legislation to effect IE disclosure. States with IE disclosure laws already in statute should work to close the loopholes that electioneering groups find in those laws each election cycle.

States also should consider whether it is in the best interests of the public to entrust an elected official with the responsibility of enforcing campaign-finance disclosure. State disclosure agencies are responsible for designing campaign-finance reports to collect all necessary information along with an effective means of sharing that information with the public in a timely manner. Entrusting that responsibility to a candidate who must file reports with that very same office and enforce disclosures of IEs that will possibly benefit him or her personally opens such officials to potential conflicts of interest that should be carefully reviewed by legislators in their efforts to improve state campaign-finance laws.

The following are important elements for effective IE reporting and disclosure systems:

- **Separate forms for reporting IEs.** Whether the reports are filed by individual persons, organizations, or political committees and regardless of whether in paper or electronic format, IEs should be reported separately from any other campaign finance report filed by the same person/committee.
- **Full disclosure of entity making IEs.** The person(s) making the IEs should be fully identified, including their full name, mailing address, occupation and employer. Organizations (whether acting on their own or through electioneering committees) should disclose their directors and treasurer in the same manner. The business address of the organization should be listed separately and the home addresses of directors should be disclosed.
- **Reporting of contributions and expenditures.** Both contributions to and expenditures by the committee(s) controlling the IEs should be reported completely. The full name, complete mailing address, occupation, employer, and detailed purpose (in case of expenditure) should be listed for both contributions received and expenditures made.
- **Complete disclosure of the impact of the IE.** The candidates and/or issues that are targeted by the IEs should be identified individually along with the amount of the expenditure attributable to each and whether the expenditure was in support or opposition.
- **Close the loopholes in current laws.** Organizations directing IE campaigns through subsidiary organizations should be considered one IE campaign and required to disclose the individuals and entities contributing to the effort. Issue ads that are clearly favorable or unfavorable to a candidate should be defined as IEs in statute. Laws should not treat attack or support ads differently simply because they ask citizens to “call X and tell him/her, thank you” or “call Y and tell

him/her this is no way to run a government” rather than urging those people to support or oppose those same candidates in the upcoming election.

- **Timely reporting of IEs.** IE reports should be filed within three days of expenditures either made or committed to be made, whichever occurs first. Disclosure agencies should display these reports on their Web sites (or have them available for public inspection when there is no Web site) within one day after the reports are filed. Since there are far fewer of these reports filed than any other report, it would not be difficult to give them the same priority as late-contribution reports by candidates.

- **Availability of IE information to the public.** State disclosure agencies should provide a means of searching for IEs on their Web sites. Search fields for IEs should be incorporated in campaign-finance databases so that IE reports can be easily located on-line. Images of paper IE reports should be provided in a separate area from candidate, party committee or PAC reports so that they can be found and viewed easily. States not providing on-line access to campaign finance reports should file paper IE reports separately from candidate, party committee, PAC or other campaign finance reports so they are easily retrievable by staff when asked by the public to make copies.

APPENDIX A: STATUS OF INDEPENDENT EXPENDITURE DISCLOSURE IN THE STATES

A-1: STATES THAT REQUIRE IE REPORTS AND THE INFORMATION IS REASONABLY AVAILABLE TO THE PUBLIC

STATE	REPORTING AND DISCLOSURE NOTES
ALASKA	Yes (in statute and practice). Individuals can make IEs pro/con candidates and ballot measures; Corporations or other groups can make IEs only on ballot measures. Groups (two or more people who raise money pro/con a candidate must form group registered with state and having the candidate's name and "for" or "against" as part of their group name. Those groups file regular campaign finance reports with the state but NOT IE reports. Have to search them out and gather data independently of IE reports. This is fairly easily done since this is all in the electronic database.
CALIFORNIA	Yes (in statute and practice). Can view and print-out IEs affecting individual candidates online, which is only way to identify how the money was spent since the viewable report only shows IE and amount but not candidate or issue targeted. Only the "Late IE reports" viewable online show candidates or issues. Best place for public to get IE Committee names is by looking at individual candidates online -- or can print list of major Donor/IE Committees and then view their reports to see which have IEs listed. Institute can identify committees filing these reports from the database provided by the Political Reform Division of the CA Secretary of State. Form 461 (filed by Major Donor & IE Committees) report IEs of \$1000 or more in a calendar year. Form 465 (Supplemental IE Report) is a paper report. Form 496 (Late IE or LIE Report) Form E-530 (Electronic Issue Advocacy Report) is filed within 45 days of election or 48 hours of payment of \$50,000 or more.
COLORADO	Yes (in statute and practice) No separate committees formed -- but regular committees file this info as part of regular reports as well as filing a "Notice of Independent Expenditure" (NIE) which is visible online -- so can get a list of committees for grid. Also must file electioneering reports (contributions or expenditures in excess of \$200 for print, radio, TV & other communications that unambiguously refer to any candidate and are distributed within 30 days of primary or 60 days of general election).
MAINE	Yes (in statute and practice). Must file separate reports (available online to print).
WASHINGTON	Yes (in statute and practice). Individuals report on form "C6" and committees report as part of regular filing (must look for check box on "C4") and itemization on Schedule A as "I." Also check C7 for IEs over \$700.

A-2: STATES THAT REQUIRE IE DISCLOSURE BUT INFORMATION IS NOT REASONABLY AVAILABLE TO THE PUBLIC

STATE	REPORTING AND DISCLOSURE NOTES
DELAWARE	Yes (in statute)/Difficult (in practice). IE information not obtainable without printing and individually reviewing every filed report. Individuals, corporations, political committees & PACs must report IEs but there is not a separate category by which to query the state's database to find such reports.
FLORIDA	Yes (in statute)/No (in practice). State says IE reports are rare and one can not search for IE report filers, as such, online. If one knows the name of a committee or individual who made an independent expenditure, one can search for filings online. However, when finding the filings of "Independent Expenditure Organizations", the expenditure information does NOT include the target of the expenditure nor whether the expenditure was made in support or opposition of the target. Downloadable committee data does not contain a field showing committee type nor does it contain any additional information than is viewable online.
IOWA	Yes (in statute)/Difficult (in practice). IE reports are filed only with county/local governments. Have to go to each county website and click to see if they have any IE reports filed. Duplicate reports are filed in multiple jurisdictions.
KANSAS	Yes (in statute)/No (in practice). Only individuals must file separate independent expenditure reports — there is identification of these online — a total of eight for the 2005-2006 election cycle. Political committees (PACs) can also make IEs; however, there is no way to identify these expenditures as such as they are reported simply as "TV ad" or "flyers", etc -- not as an IE and with no identification of the target or whether it was in support or opposition.
KENTUCKY	Yes (in statute)/No (in practice). Itemized reports of IEs are required by statute; however, there is no IE reporting form is shown online in the lists of campaign finance reporting forms and nowhere in any of the forms shown do they ask for information that would identify an independent expenditure from any other expenditure. The only "political committees" identified online are "issues committees" which are active on ballot measures. Summary data only is available for PACs — no expenditures reported.
LOUISIANA	Yes (in statute)/No (in practice). Individuals may make IEs; no committees may make IEs. One must know the names of the individuals, in advance, to find their reports; there is no listing of such individuals available and no query available from state.
MICHIGAN	Yes (in statute)/Difficult (in practice). IE info is embedded in expenditure reporting for regular independent and PAC committee reports, but identified on separate form 2B-1. A query online returns no committees in 2005-2006 filing form 2B-1, and only one committee previously.

MINNESOTA	Yes (in statute)/Difficult (in practice). Must ask state to query database to get list of purpose for each PAC and then order reports for those PACs that appear to have an IE-related purpose.
MISSISSIPPI	Yes (in statute)/Difficult (in practice). Separate reports filed with the Secretary of State (form SS04-11). However these reports can't be accessed online so one will have to call the state to determine if and how the information can be gathered.
MISSOURI	Yes (in Statute)/In Flux (in practice). "Continuing Committees" report these on Direct Expenditures Reports. For 2006 and prior years, a person would have to review all the filings of hundreds of these committees in order to find out if one or more of these reports had been filed. Beginning with 2007 reports, people will be able to search "Direct Expenditures" online. While this information will not include contributors, having the name of the committee making the direct expenditure will allow looking up and printing that information from the committee's regular campaign finance reports.
MONTANA	Yes (in statute)/No (in practice). There are no separate committees or reports -- IE information is embedded in expenditure reporting for PAC (C6) and incidental committee (C4) reports.
NEBRASKA	Yes (in statute)/No (in practice) -- Any person or organization spending money to influence an election must file campaign finance report and IEs must be reported as such along with identification of the candidate or ballot measure affected and including the position for or against a candidate or measure imbedded in those regular reports. (Only individual persons have to file a separate IE report and only one of those was correctly filed during 2006.) The state does NOT identify committees/individuals/organizations whose reports included IEs. The Nebraska Accountability and Disclosure Commission says they do not have the ability to query their database and don't have time to look at the reports manually -- but welcome others to do so. Since filers are not even identified by year, thousands of filers would have to be reviewed first for whether they filed reports in a given year and then their reports would have to be individually reviewed to determine whether any IEs were made.
NEVADA	Yes (in statute)/Difficult (in practice). Must ask state to query database to get list of purpose(s) for each PAC then order reports for those with possible IE related activities.
NEW HAMPSHIRE	Yes (in statute)/No (in practice) No separate committees or reports. IEs are embedded in expenditure reporting for regular PAC reports — no separate IE reporting.
NEW JERSEY	Yes (in statute)/Difficult (in practice). IEs reported as part of regular filing — for IEs over \$1,000, must file IND (Form) or form R-1 or R-3. This is not included in the database we received from the NJ. One will have to call state disclosure agency to find out if they can provide a list of filers and if so, how to get the specialized reports.
NEW MEXICO	Yes (in statute)/No (in practice). While PACs must file this info, the state does not keep track of what the different PACs are for. One would have to call each and every PAC and ask them if they had any independent expenditures.

NORTH CAROLINA	Yes (in statute)/Difficult (in practice). IE expenditures are embedded in regular reports so must make a data request to state in order to get committee names.
OKLAHOMA	Yes (in statute)/Difficult (in practice) -- IE reports filed -- but not provided online as part of campaign finance disclosure. One must call state to follow-up on how to identify filers and obtain reports (Candidate committees CANNOT make IEs).
OREGON	Yes (in statute)/No (in practice). IEs are embedded in expenditure reporting for regular PAC reports. Oregon just passed strict new IE reporting requirements (BM 47) on 11/7/06. Many predict court challenges or repeal by Legislature.
PENNSYLVANIA	Yes (in statute)/No (in practice). Independent expenditures are reported on a special "IE Report" (DSEB Form 505) -- which must be ordered from state at a cost of \$0.25 per page; however, one cannot determine which committees have filed such reports from Web and the state disclosure office has no list of such committees and "does not have the time to search through the files" to make such a list.
RHODE ISLAND	Yes (in statute)/No (in practice). IEs reported to candidates who then report this as an "In-Kind" on their reports -- so essentially RI has converted IEs to in-kinds. No separate IE reports or data.
SOUTH CAROLINA	Yes (in statute)/No (in practice) -- IE expenditures are embedded in expenditure reporting for regular PAC reports.
TEXAS	Yes (in statute)/No (in practice) -- IEs are embedded in expenditures reporting for regular political committees and PAC reports -- must review every page of every report filed to locate potential IEs.
UTAH	Yes (in statute)/No (in practice) -- IEs embedded in expenditure reporting for regular PAC reports -- must review every page of every report filed to locate potential IEs.
WISCONSIN	Yes (in statute)/Difficult (in practice). Committees and Individuals (EB-6) report IEs on Schedule 2-A and itemize them on Report of Independent Disbursements (EB-7). These can not be seen online. One would have to contact state to try to obtain a list of such individuals and committees and then order their IE reports. IE reports do not include "issue ads" which can attack a candidate w/out saying "do not vote" for or "vote for". Corporation expenditures are banned from campaigns but they can run "issue ads".

A-3: STATES REQUIRE IE REPORTS BUT REPORTS LACK CRITICAL INFORMATION

STATE	REPORTING AND DISCLOSURE NOTES
ARIZONA	Yes (in statute)/Difficult (in practice). IE committees as entities can be searched for online, but reported information doesn't show pro/con or identify the target candidate or issue. One would have to call state to find out if they can provide a list and how to obtain actual reports.
ARKANSAS	Yes (in Statute)/No (in practice) IE committee registration required and IE reports filed but do not identify candidate/measure supported or opposed.
GEORGIA	Yes (in statute)/Difficult (in practice). IEs are reported on form TBD-INDEPENDENT. Can't query database to find filed reports or names of IE committees. The reports don't often show candidate and pro/con stance of expenditure. One would need to call state to find out if they can provide lists of committees filing IE reports.
HAWAII	Yes (in statute)/No (in practice) -- Although IE committees must register and indicate the ballot measure or a single candidate supported or opposed, the committee is not required to state whether it supports or opposes the measure or candidate -- and if more than one candidate is supported or opposed, no candidate names are reported, at all. There is no data for IE committees on the state's database and all reports must be requested from state, although there is no identification available as to which committees have filed as supporting or opposing specific measures or candidates.
IDAHO	Yes (in statute)/Incomplete (in practice) -- Both IE (C-4) and election communications reports (C-8) are easily identifiable and printed from site. While the candidate "supported or opposed" is listed on the reports, few reports state whether the candidate was supported or opposed by the expenditure. Only expenditures (not contributions) are reported.
MASSACHUSETTS	Yes (in statute)/Incomplete (in practice). Committees making IEs must file separate reports (copies of paper reports available) -- but reports don't indicate whether the IE was pro or con the candidate -- have to call committees to ask. No contributions to these committees reported -- just their expenditures.
OHIO	Yes (in statute)/Incomplete (in practice) -- IEs must file IE-31-U and report on main form (30-A, line 12). PAC & PCE file election communications report, which lists candidate/group affected but not whether the ad was pro or con. Have to review every cover page or every report (which lists IEs) to pick out committees.
WEST VIRGINIA	Yes (in statute)/Incomplete (in practice). Only expenditures and not contributions are reported and reports do not disclose whether expenditure was pro or con the candidate. Would have to contact state to ask them to send all reports (Form F-7B) -- no list available.

A-4: STATES RECENTLY ENACTING IE REPORTING STATUTES

STATE	REPORTING AND DISCLOSURE NOTES
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VIRGINIA

Yes (in statute -- but not for 2005 elections). Starting in 2006 (for 2007 elections), there is a form filed identifying the list of candidate(s) supported or opposed with an IE and itemization of expenditure — one form for each expenditure (SBE-945.2) — if spending \$1,000 (aggregate) for statewide candidates and \$500 for other candidates. After reporting begins the Institute can evaluate if disclosure will be accessible to the public.

A-5: STATES THAT DO NOT REQUIRE IE REPORTING

STATE	REPORTING AND DISCLOSURE NOTES
ALABAMA	No (in statute and practice). No IE reporting.
ILLINOIS	No (in statute and practice) No IE reporting — but do have electioneering communications reports (A-1 reports); data not viewable online. Note: While all expenditures must be reported, there is no definition of “Independent Expenditure” in statute and the term is not used in campaign finance documents. There is no way to distinguish independent from coordinated expenditures.
INDIANA	No (in statute and practice). No IE reporting.
MARYLAND	No (in statute and practice). No IE reporting.
NEW MEXICO	No (in statute and practice).
NEW YORK	No (in statute and practice) While not identified as IE committees, all committees supporting or opposing candidates or issues must file reports with the state elections board indicating whether they are authorized or unauthorized by the candidate/issue committee. Those unauthorized are making what amounts to independent expenditures in support or opposition to the candidate but there is no way to distinguish these expenditures due to the manner in which the state makes information available to the public. The state does not include an "indicator" in their database as to whether a committee is authorized or non-authorized and no "hard copy" list kept.
NORTH DAKOTA	No (in statute and in practice).
SOUTH DAKOTA	No (in statute and practice) IEs not identified — embedded in expenditure reporting for regular PAC reports and not identified.
TENNESSEE	No (in statute and practice). No IE reporting or any kind.
VERMONT	No (in statute and practice) — No IE reports required for single individuals. While the state disclosure agency's rules state that political committee and PACs must report IEs in their campaign finance report, online searches for such expenditures do not turn up any results. There is a "Mass Media Report" which includes info on mass media expenditures of \$500 or more within 30 days of election. While it includes the name of candidate targeted it does not indicate whether the ad was pro or con the candidate and these reports are not searchable or viewable online.
WYOMING	No (in statute and practice) No IE reporting.

APPENDIX B

Email correspondence from New York Board of Elections

-----Original Message-----

From: [mailto:xxxxxxxx@elections.state.ny.us]

Sent: Thursday, March 29, 2007 2:37 PM

To: xxxxxxx@statemoney.org

Subject: Copy of CF-03 Non-Authorized Comm.

Ms. Kuykendall:

I am sorry to tell you that we do not have files for Non-Authorized Committee's in one list, electronically or on file. We would have to go through thousands of files manually. We do not have the staff or the time to go through thousands of files.

Thank you.

xxxxxxxxxxxxxx

40 Steuben Street

Albany, New York 12207

xxxxxxxx@elections.state.ny.us

APPENDIX C

Email correspondence with Pennsylvania Department of State, Campaign Finance Office

From: [mailto:xxxxxxx@state.pa.us]
Sent: Wednesday, April 25, 2007 9:36 AM
To: Maria K
Subject: RE: Independent Expenditure Reports

Maria,

We do not receive many Independent Expenditure Reports and when they are received they are filed in the recipients file. We do not keep a list of these reports so we would not be able locate and make copies for you.

I am sorry we could not be of more help to you.

Campaign Finance

-----Original Message-----

From: Maria K [mailto:xxxxxxx@statemoney.org]
Sent: Tuesday, April 17, 2007 1:44 PM
To: xxxxxx@state.pa.us
Subject: Independent Expenditure Reports

xxxxxxx,

I am emailing to find out if it is possible to get copies of all Independent Expenditure reports filed with Pennsylvania for 2005 and 2006.

Maria Kurtz

Data Acquisition Specialist

National Institute on Money in State Politics

833 N Last Chance Gulch, 2nd Floor

Helena, MT 59601

xxxxxxx@statemoney.org

www.followthemoney.org

APPENDIX D

Email correspondence with Nebraska Accountability and Disclosure Commission

From: xxxxxxxxxxx [mailto:xxxxxxxx@nadc.ne.gov]
Sent: Wednesday, April 04, 2007 3:17 PM
To: Linda King
Subject: Re: Database Query?

Ms. King:

Thank you for your inquiry. This office does not have the ability to query our data base in order to generate the information that you are requesting. All of our campaign filings are public records. These are paper records but they are also available for review on our website. You are welcome review and copy any of these campaign filings. If you are aware of some other way in which I can accommodate you, please feel free to contact me.

xxxxxxxxxx

Nebraska Accountability and Disclosure Commission

402-471-2522

-----Original Message-----

From: "Linda King" <xxxxx@statemoney.org>
To: <xxxxxxxx@nadc.ne.gov>
Cc: "Edwin Bender" <xxxxxxxx@statemoney.org>, "Sara C" <xxxxx@statemoney.org>
Date: Wed, 4 Apr 2007 13:55:53 -0600
Subject: Database Query?

Hello xxxxx,

The National Institute on Money in State Politics is conducting research on Independent Expenditures made during the 2006 election cycle and we'd like to include Nebraska in this study. Sara Christianson from our office talked with you briefly about the availability of IE reports yesterday.

Since then we have learned that besides the B-6 report, IE's are also reported on the B-2, B-4 and B-7 reports filed with your office.

It appears from viewing your website that you have a database of the contributions and expenditures that have been input from the paper reports filed. Is this the case?

If so, would it be possible for you to run a query of your database to find out the names of committees, political party committees, corporations, unions or other associations who file these reports by searching for IE entries (such as Code "C" in Item 3 of the B-7, Code "C" in Item 6 of the B-2, Code "D" in Schedule B sec 1 of the B-4, or Code "G" in Schedule C of the B-4) during 2005-2006 reporting periods?

If this is possible, can you estimate what the charges would be to run such a query?

If we had a list of the names of these filers, we could then print their reports off the Nebraska website for input into our own database. Without such a list of names, it would be impractical to review the reports of every filer on your website to look for this information manually.

Thank you for your time and any assistance you can provide us in identifying filers who reported making Independent Expenditures during the 2006 elections.

Best regards,
Linda King
Operations Director
National Institute on Money in State Politics
(406)449-2480