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Late Comments
AOR 2006-11

By Electronic Mail
Lawrence H. Norton, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Comments of the National Republican Senatorial Committee and National Republican Congressional Committee on Advisory Opinion Request 2006-11

Dear Mr. Norton:

The National Republican Senatorial Committee ("NRSC") and National Republican Congressional Committee ("NRCC"), through counsel, submit these comments in support of the advisory opinion request submitted by the Washington Democratic State Central Committee ("Committee") seeking guidance concerning the proper allocation between a federal candidate and the Committee for the costs of a proposed mass mailing. See AOR 2006-11 at 1. For the reasons set forth below, the Commission should adopt the position outlined in AOR 2006-11 and permit the Committee and the federal candidate to each pay 50% of the mass mailing's costs.

The NRSC and NRCC support the application of the allocation rules set forth in 11 C.F.R. § 106.8 to other forms of public communications because the rules have provided the regulated community with clear guidance concerning which phone banks are eligible for cost allocation. Under 11 C.F.R. § 106.8, a phone bank conducted by a party committee may allocate the costs with the federal candidate if the communication (1) refers to a clearly identified federal candidate, (2) does not refer to any other federal candidate, (3) includes another reference that generically refers to other candidates of the federal candidate's political party without clearly identifying them (e.g., "our great Republican team"), (4) does not solicit a contribution or other funds from another person, and (5) the phone bank is not exempt from the definitions of expenditure and contributions. 11 C.F.R. § 106.8; 68 Fed. Reg. 64517-64518. The application of this test to other forms of public communications such as mass mailings and television and radio advertisements will similarly provide the regulated community with clear guidance concerning which communications are eligible for cost allocations between a party committee and the clearly identified federal candidate.

In addition, the generic portion of the proposed mass mailing attributed to the party committee should not be considered a coordinated party expenditure or in-kind contribution to the federal candidate clearly identified in the mailing. The party committee portion of the costs – the generic reference to other candidates of the same political party – should not be attributed to any federal candidate because "the generic reference does not refer to any clearly identified candidate and therefore cannot be attributed to any specific candidate." 68 Fed. Reg. 64518. The Commission should apply the standards set forth in the Explanation

and Justification supporting 11 C.F.R. § 106.8 to the proposed mass mailing in AOR 2006-11:

> The amount that is not attributed to a federal candidate, however, is not considered an in-kind contribution to any candidate, a coordinated party expenditure, or an independent expenditure by the party committee or organization.

Id. Accordingly, the party committee's allocable portion of the communication should be considered a party committee operating expense. Any efforts to characterize the party committee's portion of the mass mailing described in AOR 2006-11 as an in-kind contribution or coordinated party expenditure runs contrary to the Commission's approach in adopting the phone bank rules.

Finally, the NRSC and NRCC urge the Commission to confirm in the advisory opinion that the portion of the mass mailing attributable to the clearly identified federal candidate may be paid for by the party committee as an in-kind contribution, a coordinated party expenditure, or an independent expenditure depending upon the circumstances. See 11 C.F.R. § 106.8(b)(2); 68 Fed. Reg. 64518. In addition, the party committee should be permitted to receive reimbursement from the clearly identified candidate for some or all of the candidate's attributable portion. See 11 C.F.R. § 106.8(b)(2); 68 Fed. Reg. 64518. Similar allocation methods have been sanctioned by the Commission in the past. Indeed, the regulated community normally employs such allocations. The Commission should apply the allocation rules set forth in 11 C.F.R. § 106.8 to mass mailings and other public communications.

For all the foregoing reasons, the NRSC and NRCC urge the Commission to issue an advisory opinion confirming that the costs of the mass mailing described in AOR 2006-11 may be shared equally between the Committee and the federal candidate clearly identified in the proposed mass mailing.

Respectfully submitted,

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