

# NATIONAL REPUBLICAN SENATORIAL COMMITTEE

SENATOR JERRY MORAN  
Chairman

December 4, 2013

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Via Hand Delivery

Mr. Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: RR 13L-41

Dear Mr. Jordan:

This letter responds on behalf of the National Republican Senatorial Committee and Stan Huckaby, in his official capacity as Treasurer (collectively "NRSC"), to the notification from the Federal Election Commission ("Commission") that the Reports Analysis Division ("RAD") has referred the above-referenced matter to the Office of the General Counsel ("OGC") for possible enforcement action. For the reasons explained below, the allegations should be referred for Alternative Dispute Resolution ("ADR") and the Commission should decline to open an enforcement action under 2 U.S.C. § 437g.

Legal Analysis

While the NRSC does not dispute the numbers and dollar amounts cited in the referral, there are four important mitigating facts that show why the Commission should refer this matter for ADR rather than initiate enforcement proceedings. As we noted in our response to the Commission's April 26, 2013 RFAI, with regard to several September 2012 expenditures totaling \$289,213.65, due to a miscommunication between the NRSC and its independent expenditure unit, the NRSC's normal practice of filing 48-hour notices was not followed. *First*, on its own initiative, the NRSC significantly strengthened its approval process for digital expenditures after the 2012 election in an effort to ensure that expenditures disseminated via this new medium are properly and timely reported. Such willingness to take responsibility and improve compliance strongly indicates that ADR would be an appropriate and successful route for resolution here.

*Second*, the expenditures at issue ---- digital content disseminated on the internet and social media platforms --- were fully compliant with the Act's disclaimer requirements and ultimately disclosed on the NRSC's October Monthly Report, which was filed prior to the general election. As such, voters were not denied the relevant information regarding the sponsorship or cost of the expenditures in question.

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*Third*, during the 2012 election cycle, the NRSC engaged in a large volume of independent expenditures totaling in excess of \$32 million. See Attachment A. The expenditures for which the NRSC failed to file 48-Hour Notices represent less than one percent of the NRSC's total independent expenditures for the 2012 election cycle and a single, unintentional oversight in the Committee's otherwise excellent reporting record. Indeed, this aberration in the Committee's otherwise excellent record concerned expenditures for a wholly new medium of public communication, not used by the Committee's independent expenditure unit in previous election cycles. The Commission's inquiry has brought to light the need to impose additional controls that go beyond those required by the Act and Commission regulations to govern the approval of digital independent expenditures, which the Committee has already adopted.

*Finally*, Commission precedents demonstrate that reporting matters involving similar dollar amounts and circumstances were appropriately resolved through ADR and not an enforcement action. This matter is squarely in line with those cases. In fact, in the following representative examples, the independent expenditures that were not initially disclosed on the Committees' 24- and 48-Hour Notices represented a substantial percentage of the Committees' overall independent expenditures for the election cycle. By contrast, the amount in question in this matter represents less than one percent of the NRSC's total independent expenditures for the 2012 election cycle. Therefore, the Commission must find that this matter is appropriate for ADR as it did in the following cases.

**ADR #321/Democratic Party of Oklahoma and Nina Ritchie, Treasurer:** In 2005, RAD referred the Democratic Party of Oklahoma for failure to file four 24-Hour Notices for independent expenditures totaling \$231,000 during the 2002 election cycle. These expenditures, which were ultimately reported on the Committee's 30-Day Post General Report, represented more than 80 percent of the Committee's total independent expenditures for the 2002 election cycle. As part of a settlement negotiated through ADR, the Democratic Party of Oklahoma acknowledged that its failure to file the 24-hour notices in violation of the Federal Election Campaign Act of 1971, as amended, ("FECA") occurred "due to an oversight by Committee staff." See Attachment B.

**ADR #314/ National Rifle Association (NRA) of America Political Victory Fund:** In 2005, RAD referred the National Rifle Association of America ("NRA") Political Victory Fund for failing to file one 48-Hour Notice and seven 24-Hour Notices to support more than a dozen independent expenditures totaling \$288,841.58 during the 2004 election cycle. The expenditures, which were ultimately reported on the Committee's August Monthly and 30 Day Post-General Reports, represented 22 percent of its total independent expenditures during the 2004 election cycle. As part of a settlement negotiated through ADR, the NRA Political Victory Fund acknowledged that its "failure to file the required 48-Hour and 24-Hour Notices for expenditures on the 2004 August Monthly and 2004 30 Day Post-General Reports respectively was due to an inadvertent oversight." See Attachment C.

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**ADR #158/National Abortion and Reproductive Rights Action League PAC:** In 2003, RAD referred the NARAL Pro-Choice America PAC for failing to file two 24-Hour Notices totaling \$241,956.50 to support independent expenditures during the 2002 election cycle. The expenditures, which were ultimately reported on the PAC's 2002 30 Day Post-General Report, represented nearly 20 percent of the Committee's total independent expenditures during the 2002 election cycle. As part of a settlement negotiated through ADR, the Committee acknowledged that there was "no explanation why the Commission has no record of ... the 24-Hour Notice" pertaining to one of the expenditures in question. The other expenditure at issue was misreported due to a "software error", the Committee acknowledged. See Attachment D.

Furthermore, this matter is significantly more circumscribed than last-minute reporting matters that have been dealt with through the general enforcement process and does not justify the use of additional enforcement resources outside those of the ADR process.

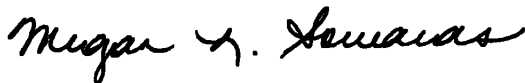
**MUR #5851/DNC Services Corporation/Democratic National Committee:** For example, in 2006, the Commission found reason to believe that the Democratic National Committee violated FECA by failing to file five 48-Hour Notices and four 24-Hour Notices for independent expenditures totaling \$1,361,430.05. The FEC reached a conciliation agreement in which the DNC agreed to pay a civil penalty of \$82,000 for the infractions. See MUR 5851, Attachment E.

This matter does not approach the volume of expenditures or complexity of accounting issues central to MUR 5851. First, the dollar amount at issue here is less than a quarter of the dollar amount in question in that matter. Second, the proper resolution of this matter will not require a detailed investigation of the facts, as there are no remaining issues of fact in dispute. By contrast, the resolution of MUR 5851 required extensive correspondence between the Commission and the DNC regarding the Committee's accounting procedures and reconciliation of multiple reports and independent expenditure notices.

#### **Conclusion**

In light of these strong mitigating factors, we respectfully request that the Office of General Counsel decline to recommend opening an enforcement action in this matter. Accordingly, we respectfully request that the Commission refer this matter to ADR for resolution.

Sincerely,



Megan L. Sowards  
General Counsel