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July 19, 2007

**BY HAND DELIVERY**

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Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 2007-17

2007 JUL 20 P 1:25

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: **Advisory Opinion Request**

Dear Ms. Duncan:

I am writing on behalf of the Democratic Senatorial Campaign Committee (the "DSCC"). Pursuant to 2 U.S.C. § 437f, I seek an advisory opinion on whether the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations permit the DSCC to treat a contribution made through an online banking service as no different from a check that is executed and sent directly by an individual.

The DSCC has received a growing number of checks from individuals using online banking services.<sup>1</sup> The way online banking services typically work is as follows: a bank's customer registers their account online with their bank, and then accesses their account over a secure line, using a user name and password. The customer may then schedule payments to vendors or any other person or entity the customer wishes to pay, transmitting this information to the bank over the Internet. The bank will then follow its customer's instructions and issue payment in the form of either electronic payment or check, depending on (1) the customer's preference and (2) whether the payee accepts

<sup>1</sup> According to a study released in 2006 by comScore Networks, which measures and analyzes consumer behavior, over 40 million Americans use online banking services. See <http://www.comscore.com/press/release.asp?press=801>

91004-0003/LEGAL13409421.1

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electronic payment. The check issued by the bank from the individual's personal account will contain the account holder's name, and, typically, the account holder's address and other information the account holder instructed the bank to include.

In the past, when receiving a check issued through an online banking service, the DSCC has sent a follow-up letter to the contributor to obtain a written signature. Given that there are no discernible security problems with online banking services, however, the DSCC would like to reduce unnecessary paperwork and inconvenience to its donors, if possible, and eliminate its follow-up requests for written signatures under these circumstances. To the extent that a check from an online banking service does not contain all necessary contributor information, and the DSCC does not have that information about the contributor already, the DSCC understands that it would still be required to contact the donor to obtain such information (*e.g.*, employer/occupation information in the case of a contribution exceeding \$200 in aggregate). *See* 11 C.F.R. §§ 104.7, 104.8.

The Commission has, in the past, shown flexibility towards the use of technology, coupled with appropriate safeguards, and has permitted contributions to be made through means other than the traditional practice of a donor sitting down and writing out a check. *See, e.g.*, Advisory Opinions 1978-68, 1984-45 (credit cards), 1989-26 (automatic fund transfers from a contributors' bank account to a committee account), 1991-20, 1990-1 (telephone calls to 900 line services), 1995-9, 1995-35, 1999-9, (credit card contributions through the Internet) and 1999-36 (electronic checks through an Internet service specifically tailored to collect information for political contributions). Moreover, the Commission has permitted a political committee to pay its bills through a computer driven billpayer service, an earlier evolution of today's online banking services. *See* Advisory Opinion 1993-4.

In light of today's widespread use of the Internet for secure banking transactions, the DSCC seeks confirmation that it may treat checks it receives from individuals using the online banking services of a reputable bank as the functional equivalent of a check written by the donor himself or herself – in essence, that the use of an online banking service does not, in and of itself, raise a question as to the permissibility of a contribution. *See* 11 C.F.R. § 103.3.

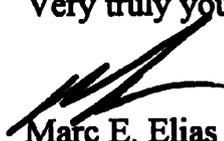
The DSCC would also like to note that when it receives a contribution from an individual using an online banking service, the check always contains a signature of a bank official, but clearly indicates the personal account from which the check is drawn.

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The DSCC would like to confirm that there is no reason for 11 C.F.R. § 104.8(c)<sup>2</sup> to be interpreted to require additional clarification from the bank or the contributor as to whom the contribution is from, when it is clear on the face of the check that it is being executed by the bank official pursuant to an account holder's instructions.

Thank you for your consideration of this matter.

Very truly yours,



Marc E. Elias  
Counsel to the DSCC

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<sup>2</sup> 11 C.F.R. § 104.8(c) states, "*Absent evidence to the contrary*, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee" (emphasis added).



"Elias, Marc (Perkins Cole)"  
<MElias@perkinscole.com>  
08/20/2007 04:30 PM

To <jlevin@fec.gov>

cc

Subject AOR

Dear Johnny,

In answer to your follow-up questions, I'm happy to provide the following clarifications:

1. The checks issued through on-line banking about which the DSCC seeks guidance are physical checks. They state the payor's name, address, and account, the payee's name (the DSCC), the date, and the contribution amount. They are signed by a bank official.

2. If the DSCC receives an on-line check from a joint account holder, and the check does not, on its face, indicate which account holder is making the contribution (e.g., there is no memo line on the check stating "Contribution from John Smith" or "Contribution from Jane Smith"), the DSCC plans to execute the steps necessary for reattribution under 110.1(k)(3)(ii)(A), unless the Commission grants permission to the DSCC to achieve reattribution under 110.1(k)(3)(ii)(B) when the check is imprinted with the names of more than one individual.

If you have additional questions, please let me know.

Sincerely,

Marc Elias

Counsel

DSCC

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