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February 26, 2009

BY E-MAIL

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

Comments on
AOR 2009-04

Re: AOR 2009-04

Dear Ms. Duncan:

The National Republican Senatorial Committee, the Republican National Committee, and the National Republican Congressional Committee (the "Committees") write to comment on Advisory Opinion Request 2009-04, dated February 17, 2009. The Committees support AOR 2009-04 with respect to national party committees establishing and administering recount funds. The Committees also support the request for AOR 2009-04's expedited consideration. AO 2006-24 provides no justification for the Federal Election Commission ("Commission") to treat national parties differently than campaign committees or state party committees; rather, it removes any such distinction.

Like the Democratic Senatorial Campaign Committee ("DSCC"), the Committees are national political parties for purposes of 2 U.S.C. § 441i(a)(1). Also like the DSCC, the Committees have been, and continue to be, actively engaged in recounts in federal elections – including the recount and currently ongoing election contest in Minnesota. The Minnesota recount and contest exemplify why recount funds are necessary, not only to candidates and state parties, but to national parties as well. After more than three months of litigation, multiple complex issues remain unresolved with, in Franken campaign attorney Marc Elias's own words, "no end in sight." For example:

- Several hundred ballots were double-counted during the recount;
- Non-existent ballots were included in the "total" (by reverting to election night totals);
- Ballots "found" after election day were included in the "total" (by ignoring election night totals); and

- The Minnesota contest court has ruled potentially thousands of ballots that have already been included in the "total" to be illegal under Minnesota law.

The confidence of Minnesota voters in the outcome of the 2008 Senate election is at stake. These are vital and shared interests of the candidate, the state party, and the national parties, and interests that require a terrific amount of resources to defend.

In AO 2006-24, the Commission deemed recounts to be "in connection with an election for Federal office" and required any recount fund established by a Federal candidate or state party to comply with the amount restrictions and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"). Put simply, AO 2006-24 federalized recount funds.

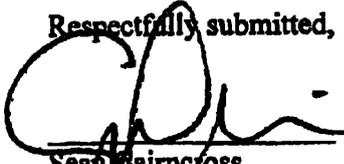
The Committees, like candidate and state party committees, are subject to 2 U.S.C. § 441a's contribution limits. 441i(a)(1), applicable to national party committees, however, does not convert any donation into a "contribution" anymore than do either 441i(e) or 441i(b), the provisions applicable to candidate and state party committees. As such, and as AO 2006-24 made clear, a donation made to a recount fund established and administered by one of the Committees that otherwise complies with the Act's source and amount restrictions and reporting requirements does not trigger 2 U.S.C. § 441a(a)(3)'s aggregate biennial contribution limit.

Before AO 2006-24, recount funds had been considered outside the scope of the Commission's regulatory authority, aside from the source restrictions that had been, and remain, applicable to recount funds. The Committees continue to believe that AO 2006-24 was wrongly decided in broadening the Commission's jurisdiction over recount funds. Given the Commission's rationale in AO 2006-24, however, there is no legal basis for putting national parties on a different footing regarding recount financing than state parties and campaign committees.

The national parties have no less interest in supporting their party and candidates in a recount than do candidate and state party committees. As AOR 2009-04 and the above make clear, no legal basis exists for the Commission to treat national parties any differently.

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Respectfully submitted,



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