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August 10, 2009

AOR 2009-22

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Federal Election Commission
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FEDERAL ELECTION
COMMISSION
2009 AUG 10 PM 2:22
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Ms. Duncan:

We write on behalf of the Democratic Senatorial Campaign Committee, pursuant to 2 U.S.C. § 437f, to seek an advisory opinion from the Federal Election Commission. This request pertains to the DSCC's compliance with the new bundling reporting requirement implemented as part of the Honest Leadership and Open Government Act. Its question is a time-sensitive one that will determine the bundling report filing schedule it must follow for the remainder of the calendar year. Accordingly, we are requesting the Commission expedite this request and issue a response as soon as possible. *See* Advisory Opinion Procedure, 74 Fed. Reg. 32,160, 32,162 (July 7, 2009):

The DSCC is a national political party committee registered with the Commission. Pursuant to 2 U.S.C. § 434, as amended by Section 204 of the Honest Leadership and Open Government Act, the DSCC is now required to file periodic reports with the Commission on which it discloses certain "bundled" contributions. "Bundled" contributions include those that are forwarded to a political committee by, or received by a committee and credited to, a federally-registered lobbyist, lobbying organization, or lobbyist-controlled PAC. *See* 2 U.S.C. § 434(i); 11 C.F.R. § 104.22(a)(6).

A political committee subject to this reporting requirement, including a national political party committee like the DSCC, must file a bundling report whenever it receives two or more bundled

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contributions over a certain time period, called a "covered period," that together exceed a certain monetary threshold. *See* 2 U.S.C. § 434(i); 11 C.F.R. §§ 104.22(b)(1), (g). Each filing committee must calculate its bundled contributions over two covered periods, and file reports at the end of each such period. These "covered periods" – specifically, which ones apply to the DSCC – are the subject of this request.

Generally, HLOGA requires a filing committee to calculate its bundled contributions and file bundling reports according to two covered periods: its usual filing schedule for receipt and expenditure reports (generally, quarterly or monthly), and semi-annually as well. *See* 2 U.S.C. § 434(i). When it wrote rules implementing these provisions, however, the Commission recognized that this filing schedule would place a disproportionate burden on committees like the DSCC that file FEC reports every month. *See* Reporting Contributions Bundled by Lobbyists, Registrants, and the PACs of Lobbyists and Registrants, 74 Fed. Reg. 7,285, 7,290 (Feb. 17, 2009). It thus created an alternative schedule for monthly filers that allows them opt to file bundling reports on a quarterly basis. *See* 11 C.F.R. § 104.22(a)(5)(iv). Filers choosing this option must notify the Commission in writing, and may not change filing frequency more than once a year. *See id.*

As it is a monthly filer, the DSCC would like to opt to file according to the less frequent quarterly schedule, and intends to notify the Commission of this with its next monthly report, on August 20. However, it is not certain what precisely its new filing schedule would be for the remainder of the year, and therefore seeks the Commission's guidance on this point.

The Commission's rule establishing the quarterly alternative for monthly filers cross-references Section 104.22(a)(5)(ii), the new provision establishing the quarterly filing schedule for committees that file their periodic receipt and expenditure reports quarterly. Specifically, the quarterly alternative rule gives monthly filers the option to file pursuant to the "quarterly covered period in paragraph (a)(5)(ii)" of the same regulation. *See* 11 C.F.R. § 104.22(a)(5)(iv). However, Section 104.22(a)(5)(ii) sets out two different filing schedules: a quarterly filing schedule for election years (with pre- and post-election reporting), and a semi-annual reporting schedule for non-authorized committees in non-election years. *See* 11 C.F.R. § 104.22(a)(5)(ii).

The DSCC is uncertain how to interpret this rule, and seeks the Commission's guidance. By one reading, "the quarterly covered period in paragraph (a)(5)(ii)" refers only to that part of Section 104.22(a)(5)(ii) that discusses a quarterly filing schedule. This would lead the DSCC to conclude that, should it choose the quarterly filing option, it would file bundling reports according to a quarterly filing schedule for the whole election cycle. By another reading, the DSCC would be subject to the entire text of Section 104.22(a)(5)(ii) if it chooses the quarterly option. Under this interpretation, the DSCC would file quarterly during election years and semi-annually during non-election years (as Section 104.22(a)(5)(ii) allows for quarterly filers).

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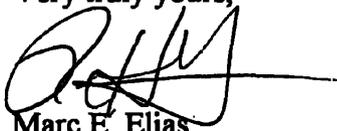
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The Commission's Explanation and Justification for the new rule is ambiguous on this point. Although it does refer to a "semi-annual" filing for monthly filers opting to file quarterly, it is unclear whether this reference is to the usual semi-annual bundling report applicable to all filers, or to an adjusted schedule for quarterly filers in a non-election year. *See Reporting Contributions Bundled by Lobbyists*, 74 Fed. Reg. at 7,291.

This is a time-sensitive question, as the DSCC would like to make the quarterly selection with its next filing, which is due on August 20. We are therefore seeking the Commission's guidance on this question of regulatory interpretation, and that the Commission consider this for expedited review.

Please do not hesitate to call us should you have additional questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Elias', with a long horizontal stroke extending to the right.

Marc E. Elias

Rebecca H. Gordon

Counsel to the Democratic Senatorial Campaign Committee