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**Republican
National
Committee**

Counsel's Office

June 28, 2011

VIA FACSIMILE

Shawn Woodhead Werth
Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments on Advisory Opinion Request 2011-13 (DSCC)

Dear Ms. Werth:

The Republican National Committee ("RNC") submits the following comments regarding AOR 2011-13 (DSCC). The changes proposed in the Democratic Senatorial Campaign Committee Advisory Opinion Request ("DSCC AOR") obviously are allowed under Commission regulations. As the DSCC points out, even after the changes, the webpage will still go well beyond the existing informational and disclaimer requirements. The RNC urges that the Commission, in approving the DSCC's request, be careful to avoid using any language that could be construed to require any language or certifications not required by the regulations.

In particular, to avoid any confusion in the regulated community, the Commission should clearly emphasize that 1) regulations do not require certifications of eligibility to be placed on a party committee solicitation webpage, and 2) committees that only raise federal funds – and, in particular, national party committees – are not required to advise donors of the limitations and prohibitions of the Federal Election Campaign Act ("Act"). We urge that, in approving the DSCC's proposed new solicitation webpage, the Commission make clear that the inclusion of any information beyond the standard "paid for" disclaimer at 11 CFR § 110.11(a)(1), (b)(3) and "best efforts" disclosure at 104.7(b) is purely optional and that such inclusion is completely immaterial to the Commission's finding that the proposed changes to the webpage are permissible under the Act and regulations.¹

¹ The national party committees also must disclose the non-deductibility of contributions, 26 U.S.C. §6113, but this requirement falls outside the Commission's jurisdiction. Furthermore, each state, district, and local party committee that spends money on both Federal and non-Federal elections must include a "Federal election purpose" disclosure, 11 CFR §102.5(a), but national committees do not have this requirement. 11 CFR § 102.5(c).

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A review of the solicitation webpages of all the Democratic and Republican national committees reveals that each goes well beyond the requirements of the Act and regulations. For example, all of the solicitation pages include certifications of contributor eligibility, although these certifications vary in form and in what they ask contributors to certify. Unfortunately, this review also reveals the parodistic qualities of these web pages. In viewing the solicitation pages, one cannot help but wonder if they are solicitation pages that contain disclaimers or disclaimer pages that contain solicitations. Either way, most of the legalese that wards off contributors is not required, and it would be helpful for the Commission to explicitly make this point.

Advisory opinions should promote clarity rather than sow confusion. The inclusion of immaterial facts in the advisory opinion, such as that clicking the "Support Democrats" button would still include certifications regarding age and nationality, could lead some in the regulated community to mistakenly believe these certifications are required. While national party committees may well have good reason to choose to go beyond the mandated disclosures, those decisions are in the discretion of each committee and cannot be compelled by an advisory opinion.

With the DSCC AOR, the Commission has the opportunity to emphasize that committees need not go beyond the regulatory requirements. That the DSCC is reluctant to make clearly permissible changes without the protection of an advisory opinion illustrates the uncertainty, confusion, and speech-chilling effects resulting from an overly complicated regulatory framework, which is marked by dicta-laden advisory opinions and frequently vague, inconsistent, and seemingly arbitrary standards in enforcement matters. A plainly worded advisory opinion that focuses on the material facts, i.e. the inclusion of the "paid for" and "best efforts" disclosures, would be beneficial. We respectfully ask the Commission to take that course in the present matter and a similar course with respect to future advisory opinion requests.

Sincerely,



John R. Phillippe Jr.
Chief Counsel

cc: Christopher Hughey, Acting General Counsel