WIN IN '96 DEMOCRATIC NATIONAL COMMITTEE
Donald L. Fowler, *National Chair* • Christopher J. Dodd, *General Chair*

December 4, 1996

Colleen T. Sealander, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Ms. Sealander:

Enclosed please find an original and one (1) copy of the Democratic National Committee's response to the Commission's initiation of MUR 4505. Please keep the original and time-stamp and return the copy for our files.

Thank you for your assistance with this filing.

Sincerely,

Joseph M. Birkenstock, Esq.
Deputy General Counsel

Enc. (3)

BEFORE THE
FEDERAL ELECTION COMMISSION

In the matter of:

Democratic National Committee	)	**MUR 4505**
and	)	
R. Scott Pastrick, Treasurer	)	

RESPONSE TO COMPLAINT

This memorandum is submitted as the response of the DNC Services Corporation/ Democratic National Committee ("DNC"), and R. Scott Pastrick, as Treasurer, to the Commission's initiation of MUR 4505.

The DNC hereby requests that the Federal Election Commission ("FEC" or "the Commission") find no reason to believe that the DNC, and/or R. Scott Pastrick as its Treasurer, committed any violation with respect to the issues raised in this matter and take no action against the respondents.

BACKGROUND

This matter relates to a complaint filed by the National Republican Senatorial Committee ("NRSC") against the DNC for allegedly violating the Commission's regulations on "administrative expenses" and "issue advocacy." In particular, the NRSC alleges that the DNC improperly characterized and financed a television ad it ran in various media markets in New Jersey.

The ad, titled "24 Times," was run by the DNC as part of a national issue campaign which generally was aimed at educating the American public and obtaining concessions from various political figures on issues of concern to the Democratic Party. The stability and integrity of the

Medicare program is one such issue, and with the particular ad described in the NRSC's complaint, the DNC was seeking to engender grass roots political pressure to obtain policy concessions from New Jersey Congressman Dick Zimmer. The ad called upon viewers to contact Zimmer and urge him to change his position on Medicare funding.

The DNC's ad in this matter sought to accomplish three specific things. First, the DNC hoped to influence Representative Zimmer's voting positions on an issue over which he exercised great authority as a Member of the United States House of Representatives. Second, the DNC sought to pressure Zimmer as a candidate for the United States Senate to adopt policy positions to which he could be held in office; and third, the DNC hoped to raise public awareness and support of its own policy agenda and positions.

ARGUMENT

I. Electioneering is Not the Proper Standard for Judging the Permissibility of an Issue Advocacy Campaign; But In Any Event, The DNC's "24 Times" Ad Did Not Constitute Electioneering

The NRSC's complaint accurately recounts the applicable Commission precedent which established the legality of the method of producing and financing issue advertisements used by the DNC in this instance, but misinterprets the meaning of that precedent and applies the wrong standard to the DNC's ad campaign in this case.

As noted in the complaint, Commission Advisory Opinion 1995-25 set out the Commission's position on issue advocacy, and officially recognized that "legislative advocacy media advertisements that focus on national legislative activity and promote the ... Party should be considered as made in connection with both Federal and non-federal elections, unless the ad

would qualify as coordinated expenditures on behalf of any general election candidates of the Party under 2 U.S.C. § 441a(d)." This opinion further provided that because "[a]dvocacy of the party's legislative agenda is one aspect of building or promoting support for the party that will carry forward to its future election campaigns," the cost of ads such as these should not be treated as coordinated expenditures; but as administrative, party-building activities.

The facts in this matter prove that the "24 Times" ad about which the NRSC has complained was produced and paid for according to the rules established by the Commission in AO 1995-25. This opinion required that the advertisement not include an "electioneering message," and offered three factors to support the conclusion that the ad in that opinion constituted issue advocacy. First, even though the ad specifically referred to a Federal officeholder who was then also a candidate for Federal office, the ad did not contain an electioneering message. The ad made no reference whatsoever to any election or popular voting. Second, the ad contained a "call to action," an urge to the viewer to contact the officeholder with respect to important legislation or policies. Finally, the ad contained an appropriate disclaimer and the payments for the ad were properly made and reported. In sum, contrary to the NRSC's unsupported allegation that "[t]his advertisement contains a clear and unambiguous 'electioneering message' in opposition to the candidacy of Dick Zimmer," the DNC's "24 Times" ad lacked all the elements the Commission had established as the standards for electioneering.

A. The "24 Times" Advertisement Included a Proper Call to Action

The NRSC also argues that the "24 Times" advertisement contains an improper "call to action" since viewers were being urged to contact Rep. Zimmer on policy matters after Congress

had adjourned. Contrary to the NRSC's inaccurate recitation of AO 1995-25, the Commission's precedent does not require the call to action in an issue advertisement to be limited to specific, pending legislation. As found in FEC v. Christian Action Network, 894 F. Supp. 946 (W.D. Va. 1995), a call to action can be as generic as inviting the viewer to contact the sponsor for more information. Furthermore, a call to action could appropriately urge viewers to pressure a candidate, including Rep. Zimmer, into adopting policy positions while Congress was out of session to which he could be held upon taking office. In short, AO 1995-25 does not require a call to action to refer to specific, pending legislation and does not limit a party's right to communicate its political message and positions to the duration of a Congressional session.

B. The "24 Times" Advertisement Included the Correct Disclaimer and Was Properly Financed

The DNC paid for and characterized all of its issue advocacy pieces, including "24 Times," as administrative, party-building expenses in accordance with the conclusions of AO 1995-25. The ad contained the appropriate disclaimer, accurately stating that it was paid for by the DNC, and the DNC reported and allocated the costs associated with the ad under 11 C.F.R.§ 106.5(d).

C. The "Placement and Timing" and Alleged Coordination Between the DNC and the Torricelli Campaign is Irrelevant

The NRSC's complaint concludes with a red herring meant to distract the Commission's attention away from the appropriate legal standards in this case. The NRSC claims that the fact that the ads were run on New York television stations and appeared after Congress had adjourned for the year support its arguments about the ad's illegality. Both arguments are simply inapposite.

First, the NRSC offers no legal basis, and there is none, for its implicit assertion that issue ads cannot be run outside a sitting officeholder's electoral district. This argument overlooks (or ignores) the political pressure that can be brought to bear on candidates to take policy positions more favorable to the Democratic Party's agenda. In fact, it is precisely when an officeholder is seeking re-election or election to another office, that ad campaigns appealing directly to the people to speak out on specific issues can make the greatest impression on that officeholder. During the 1996 election cycle, this strategy was particularly effective for the Democratic Party in gaining concessions from Republican officeholders and candidates on issues like Medicare funding and raising the minimum wage.

The second red herring the NRSC offers is that the "24 Times" ad was coordinated with the Torricelli campaign. No one has suggested that the "24 Times" ad is an independent expenditure on the part of the DNC, and therefore the alleged coordination of the ad is simply irrelevant. Furthermore, when the Commission issued AO 1995-25, its regulations presumed that parties necessarily acted in coordination with their candidates and were legally incapable of making independent expenditures. The DNC's coordination with specific candidates or campaigns or lack thereof is not relevant to the permissibility of any resulting issue advocacy campaigns.

II. Express Advocacy is the Proper Standard to Use in Determining the Permissibility of an Issue Advocacy Campaign

A. The "24 Times" Advertisement Did Not Contain Express Advocacy

The NRSC's complaint offers only the naked, ipse dixit assertion that "there is

unambiguous 'express advocacy' in opposition to the candidacy of Dick Zimmer" in the DNC's "24 Times" ad. NRSC Complaint at 5. Notwithstanding this alleged "unambiguity," the complaint fails to offer even the slightest specific indication of where this "express advocacy" is contained or what about the ad constitutes the express advocacy alleged to be so "unambiguous." The implication of this complaint is that if express advocacy is claimed to be "unambiguous," the complainant need offer no proof of that allegation.

The NRSC's failure to provide justification for their allegation is understandable, however, in that the "24 Times" ad does not expressly advocate the election or defeat of a federal candidate. The ad does not contain words of express advocacy such as "vote for," "vote against," "elect," or "defeat." The ad's "call to action" urges the viewer to "Call Dick Zimmer" and express his or her opinion on Medicare funding. Nothing in the ad suggests that viewers should take action for or against Zimmer with respect to any Federal election. Since the ad appeals to viewers to contact Zimmer about policy positions, without reference to Zimmer's election or defeat as a Federal candidate, the ad clearly cannot constitute express advocacy.

B. Section 441a(d) Should be Construed to Apply to Party Communications Only When They Expressly Advocate the Election or Defeat of a Clearly Identified Candidate

In the Colorado Republican decision, the Supreme Court determined that there was no need to reach the issues of whether the FEC's "electioneering" test is unconstitutionally vague and, if so, the proper test for determining when the costs of a party communication are subject to section 441a(d). Colorado Republican, 116 S. Ct. at 2317 (1996). We submit, however, as we did in an amicus curiae brief filed with the Court in the Colorado Republican case, that section

441a(d) should be construed to apply to party communications only when they expressly advocate the election or defeat of a clearly identified candidate. Brief for Democratic National Committee as Amicus Curiae at 8.

In Buckley v. Valeo, 424 U.S. 1 (1976), the Court found that, while contribution limitations impose only a "marginal restriction upon the contributor's ability to engage in free communication," 424 U.S. at 20-21, limits on expenditures "represent substantial . . . restraints on the quantity and diversity of political speech." 424 U.S. at 19. The Court found that the government's interest in preventing the reality or appearance of corruption by the influence of campaign contributions on candidates' actions is "sufficient to justify the limited effect" of contributions on First Amendment freedoms. Id. at 29. The Court then proceeded to analyze the Act's limitation on independent expenditures by individuals and groups "relative to a clearly identified candidate."

First, the Court found that "in order to preserve the provision against invalidation on vagueness grounds," this provision "must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Id. at 44. Only then did the Court address the question of whether, "even as thus narrowly and explicitly construed," the limitation "impermissibly burdens the constitutional right of free expression." Id. at 44. The Court found that the "absence of pre-arrangement and coordination" of independent expenditures "undermines the value to the candidate," thereby "allev[iating] the danger" of corruption. Id. Therefore, the governmental interest in preventing corruption does not justify the more substantial restraint on free expression imposed by limits on independent expenditures. Id. at 47. See Colorado Republican, 116 S. Ct. at

2313.

In fact, parties engage in a wide range of communications. Party spending for some of these communications is akin to a contribution for purposes of the Buckley analysis. However, many party communications represent the party's own political expression and are clearly entitled to the degree of constitutional protection Buckley afforded to independent expenditures. Many party communications simply promote the party, its ideas, positions or message broadly, rendering any link to specific candidates too diffuse to present even the perceived threat of undue influence. That is true notwithstanding the fact that there may be some degree of coordination arising from the party's unique need and right to communicate and coordinate with its own candidates.

Section 441a(d) must be narrowly construed, then, to avoid impinging on those party expressions which are entitled to a high degree of First Amendment protection but which do not fall into the area of speech intended to be regulated. The Court supplied such a construction in Buckley, through application of the "express advocacy" standard. Buckley, 424 U.S. at 44. This narrowing construction, intended to distinguish between issue discussion and electoral advocacy, is equally effective in distinguishing between party communications that are sufficiently linked to a particular candidate to be treated as mere contributions to the candidate, and expressions which more broadly promote the party, its themes, ideas or positions, and therefore are akin to protected expenditures.

1. Many Party Communications Should Be Entitled to the High Degree of Constitutional Protection Accorded to Independent Expenditures

Political parties expend their funds on a wide array of communications. These range from communications which can clearly be considered, for purposes of this Court's analysis in *Buckley*,

to be akin to contributions to those which, under that analysis, should be accorded the same high degree of protection as expenditures.

At one end of the continuum, political parties may pay for communications that are contracted for or directly requested by a single candidate, and are made for the direct and specific benefit of that candidate. These expenditures are clearly like contributions, in that they do not implicate the party's own expression, and thus "do not in any way infringe the [party's] freedom to discuss candidates and issues;" rather, they "involve[] speech by someone other than the contributor." Buckley, 424 U.S. at 21. This sort of party spending is properly regarded as a kind of " 'speech by proxy' that . . . is not the sort of political advocacy that this Court in Buckley found entitled to full First Amendment protection." California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 196 (1981).

At the other end of the continuum lie a variety of communications that formulate and promote the party's ideas, programs and themes. Parties develop policy ideas and positions, not only in the adoption of their formal platforms, but on an ongoing basis. Both the DNC and the Republican National Committee ("RNC"), for example, have sponsored a number of policy councils and other policy development projects. Cf. David E. Price, Bringing Back the Parties 263-79 (1984). Parties are also involved in promoting their policies and positions by urging support for, or opposition to, legislation. The RNC, for example, recently requested guidance from the FEC with respect to a planned program of advertising concerning legislative proposals such as the balanced budget debate and welfare reform that were being considered by the Congress. Advisory Opinion 1995-25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 (1995). And the DNC and some Democratic state parties have recently run advertisements on the

balanced budget debate, including the advertisements apparently at issue in the complaint filed in this case. The DNC has in the past undertaken other advertising campaigns to promote legislative proposals or positions. See generally Herbert E. Alexander & Anthony Corrado, Financing the 1992 Election 295-96 (1995). Similarly, both Democratic and Republican committees publish bulletins, brochures and other communications that promote their respective parties' positions on legislative and other public policy issues (*e.g.*, the DNC's "Daily Briefing" and the RNC's weekly "Monday Briefing"). In the same vein, the RNC sponsors a television program, "Rising Tide," in which party officials and leaders discuss such issues and promote Republican views and positions. See Stephen Seplow GOP-TV: Plugged in to party line, Philadelphia Inquirer, A1 (Oct. 31, 1995).

These activities may or may not include reference to a clearly identified candidate. Often these party communications refer to the positions or views of legislative leaders who may be candidates for re-election. For example, party discussions of legislative and policy issues may criticize the leaders of the opposing party for their views on, or actions with respect to, such issues.

This type of communication is clearly entitled to the same degree of protection that the Court in Buckley accorded to expenditures, because limiting the amount parties can spend for such communications would "impose substantial restraints on the quantity of political speech." 424 U.S. at 39. In formulating and promoting policy positions, and supporting or opposing legislation, the parties are engaged in expressions "at the core of the First Amendment," Federal Election Comm'n v. National Conservative Political Action Comm. ("NCPAC"), 470 U.S. 480, 493 (1985). This is all the more significant because "a major purpose of the Amendment was to

protect the free discussion of governmental affairs, . . ." Buckley, 424 U.S. at 14 (citing Mills v. Alabama, 384 U.S. 214, 218 (1966)).

Further, such expressions as well as "generic" communications promoting Democratic Party themes cannot be considered mere "proxy speech." California Medical Ass'n, 453 U.S. at 196. Rather, they are expressions by the party itself, reflecting the party's collective judgment about what to say and when and how to say it. In this sense they do "communicate the underlying basis for the support" of the party and its candidates and thus directly implicate the party's "freedom to discuss candidates and issues." Buckley, 424 U.S. at 21.

Finally, these communications also directly implicate the parties' associational rights. "[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the `liberty' assured by. . . freedom of speech." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958). This "freedom of association protected by the First and Fourteenth Amendments includes partisan political organization." Tashjian v. Republican Party, 479 U.S. 208, 214 (1986). In addressing legislative and policy issues, and promoting the party and its themes and principles, the parties function as organizations which serve to amplif[y] the voice of their adherents. NCPAC, 470 U.S. at 494 (citing Buckley, 424 U.S. at 22).

Thus, while some party communications can logically be treated as contributions, many others must be considered akin to expenditures, entitled to the same high degree of constitutional protection, in the first instance, as the limitations on expenditures of individuals and groups considered in Buckley.

2. Many Party Communications Do Not Implicate the Purpose of the Statute Notwithstanding Some Degree of Coordination with Candidates

"[P]reventing corruption or the appearance of corruption are the only legitimate and

compelling government interests thus far identified for restricting campaign finances." NCPAC, 470 U.S. at 496-97. The Supreme Court has held that the purpose of the Act, including section 441a(d) is

> the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office.

Federal Election Commission v. Democratic Senatorial campaign Committee, 454 U.S. 27, 41 (1981). In Buckley, the Court held that "[t]he absence of prearrangement and coordination. . . with a candidate," 424 U.S. at 47, in an independent expenditure alleviates the danger of corruption.

In Colorado Republican, the Court declined to rule that all party communications which are in fact coordinated in some way with candidates automatically implicate the statutory purpose. To the contrary, the Court suggested that:

> [P]arty coordinated expenditures do share some of the constitutionally relevant features of independent expenditures. But many such expenditures are also virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills). . . .

116 S. Ct. at 2320. Finding the issue to be "complex," and not squarely presented in the case before it, the Court deferred the question of whether and under what circumstances in-fact party coordinated party expenditures may be limited. Id.

The Court's reticence was well-founded because not all party expenditures that are coordinated with candidates implicate the statutory purpose. Parties have a unique need to communicate and coordinate with their candidates. Such communications are with candidates not only in their capacities as persons seeking election to office, but also in their roles as party officials, leaders and spokespersons.

Sponsoring a television show promoting the party's position on issues, for example, may naturally feature party leaders who are officeholders -- and candidates -- as spokespersons for the party. Advertising, brochures, leaflets and other materials promoting the party's platform or positions on legislative or policy issues may require obtaining information and views from legislators who may also be candidates. "Generic voter drive" activity may appropriately involve consultation with party leaders, who are officeholders and/or candidates, about which constituencies should be given priority in voter registration efforts, or what themes should be featured in materials or advertising urging the public to "vote Democrat" or "vote Republican."[1]

Parties have not only an inherent need, but also a unique associational right, to communicate and coordinate with their candidates. See Colorado Republican, 116 S. Ct. at 2322-23 (Kennedy, J., concurring in the judgment and dissenting in part). Limiting the ability of parties to communicate with their own leaders, including candidates, burdens the right of the party to "identify the people who constitute the association." Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 122 (1981). If the right of a party to select its "standard-bearers," free from interference by the state, is a protected form of freedom of association, parties must be free to work with and communicate with those candidates. See Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 224 (1989).

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[1] Indeed, all of a party's activities may necessarily be coordinated with a candidate where officeholders who are or may be candidates actually serve as party officials, with broad responsibility for determining the party's priorities, message and programs. For example, the chairs of the congressional and senatorial campaign committees, Republican and Democrat, are Members of the House of Representatives and Senate, respectively, and national party committees may be led by officeholders as well. Senator Christopher J. Dodd currently serves as general chairman of the DNC and then-Senator Paul Laxalt formerly served as general chairman of the RNC.

It does not follow, from the parties' unique need and right to coordinate with candidates, that all party communications implicate the statutory purpose of preventing contributors from exerting undue influence. Party communications promoting positions on legislation and issues, as well as generic communications urging support for the party and promoting its principles and themes, may as noted above, be coordinated with one or more candidates and may refer to or use as spokespersons the party's own leaders or criticize opposition figures (thereby referring to a "clearly identified" candidate). Yet such expressions inherently benefit the party as a whole; their benefit is not limited to any one particular candidate. The threat of "undue influence" over a candidate effectively disappears, because the potential link between any one contribution to the party and the benefit to any one candidate becomes attenuated or dissolves altogether. These kinds of communications, therefore--while entitled to the highest degree of constitutional protection--do not trigger the congressional concern underlying section 441a(d).

3. Limiting the Scope of Section 441a(d) to Express Advocacy Is Necessary to Avoid Its Invalidation As Unconstitutionally Vague

As noted above, section 441a(d) potentially reaches substantial areas of coordinated party communication that represent the party's own, protected political speech, but which do not bear a sufficiently close relationship to the purpose of the section notwithstanding some coordination with candidates. Party committees cannot, under the First Amendment, be required to guess at what point along the broad spectrum the limits of section 441a(d) will apply. "[S]tandards of permissible statutory vagueness are strict in the area of free expression." NAACP v. Button, 371 U.S. 415, 432 (1963). Where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to ' "steer far wider of the unlawful zone" than if the boundaries

of the forbidden areas were clearly marked.' " Grayned v. City of Rockford, 408 U.S. 104, 109 (1972) (footnotes and citations omitted). In this case, unless section 441a(d) is narrowly construed, party committees will be forced to steer wide even of those activities that are constitutionally protected but do not fall with the core area sought to be regulated.

This problem of vagueness is precisely the one addressed by the Court in the first stage of its analysis of expenditure limits on groups and individuals in Buckley. The Court held that such a limitation "must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Buckley, 424 U.S. at 44. In adopting that construction, the Court was concerned that the limitation might otherwise inhibit discussions of issues and candidates that are constitutionally protected but do not fall squarely into the area of congressional concern:

> [T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially, incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.

Id. at 42. The Court thus sought to "distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249 (1986).

To be sure, the situation of political parties is different than that of other groups since all of a party's activities are, in a sense, political in nature. In *Buckley*, the Court found that it was not necessary to apply FECA's disclosure requirements only to party committee expenditures "expressly advocating" election or defeat of a candidate, since all party expenditures were intended to be subject to disclosure--and could, therefore, "be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." 424 U.S. at 79.

But disclosure requirements present a far less significant burden on parties than limits on expenditures. "Unlike the overall limitations on contributions and expenditures, the disclosure requirements impose no ceiling on campaign-related activities." Id. at 64. While all party expenditures are subject to disclosure under the FECA and the Commission's rules, as explained above, the Court has never suggested that section 441a(d) could apply to *all* party communications and the Commission has never sought to apply it so broadly.

To the extent that party communications involving substantial First Amendment rights do not implicate the relevant statutory purpose, they are indeed equivalent, as a matter of constitutional analysis, to "independent" expenditures by other kinds of organizations. See Colorado Republican, 116 S. Ct. at 2320. Accordingly, to avoid the same problem of vagueness and overbreadth the Court found to be presented by the individual and group expenditure limit in Buckley, section 441a(d) must be construed to apply only to those coordinated party communications that "expressly advocate" the election or defeat of a clearly identified candidate. Id. at 44. Just as the "express advocacy" standard was found necessary to ensure that the limit on individual and group spending would not inhibit issue discussion by such individuals and groups, so too would that standard serve to ensure that the limit on party spending does not infringe on those analogous areas of party activity that are subject to a high degree of constitutional protection and do not fall into the "core area sought to be addressed by Congress. Id. at 79.

The "express advocacy" standard effectively limits the application of section 441a(d) to those instances where party spending is directly and "unambiguously related to the campaign of a particular federal candidate." Id. at 80. It would encompass those instances of party "proxy speech," i.e., merely providing funds as a candidate directs for her own specific election benefit,

which can legitimately be treated for constitutional purposes as mere contributions to the candidate. At the same time, it would eliminate the risk that parties would be inhibited from engaging in those activities which represent their own, protected expression--for example, discussion of issues, policies, legislation, promoting the party as a whole--and in which the governmental interest in avoiding "undue influence" over any particular candidate is highly attenuated or non-existent because the benefit of the activity is widespread and diffuse, and not sufficiently linked to any particular candidate.

Section 441a(d) clearly cannot be constitutionally applied to all coordinated party communications. To avoid its invalidation on grounds of overbreadth and vagueness, its scope should be limited to those party communications that "expressly advocate" the election or defeat of a clearly identified candidate.

For the reasons set forth above, section 441a(d) should be construed to apply to party communications only when such communications expressly advocate the election or defeat of a clearly identified candidate. The DNC's "24 Times" advertisement that ran in the New York/New Jersey market did not contain such express advocacy, either under the narrow test recently adopted by the courts or under the broader definition set forth in the Commission's regulation. Accordingly, the costs of that advertisement was not subject to the limitations of section 441a(d).

III. CONCLUSION

For these reasons, the Commission should find no reason to believe the DNC violated 2 U.S.C. §§ 441a(a)(2), 441a(d), 441b(a), 441d, 434b, and 11 C.F.R. § 110.11(a)(2) and close this matter with respect to the DNC.

Sincerely,

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