BEFORE THE FEDERAL ELECTION COMMISSION

IN RE:

NEW MEXICO DEMOCRATIC PARTY,

Respondent.

MUR 4643

RESPONDENT'S OPPOSITION TO A FINDING OF PROBABLE CAUSE

The central question in this matter is whether a state party can be held liable for allocating get-out-the-vote, field and administrative expenses before a special election, and for treating those expenses as not counting against candidate limits, when none of them involved any mention of a candidate's name.

The answer is no, for three reasons:

First, the controlling rules and statute are clear. They allow political parties to allocate their get-out-the-vote expenses when they do not mention a specific candidate. Further, they require the identity of the candidate to be apparent from the communication in order to count against that candidate's limits. Neither condition is satisfied here.

Second, even if the expenses could be treated as non-allocable contributions or coordinated expenditures, the Commission cannot do so here. During 1997, the Party complied with the rules, as one would have reasonably understood them. To seek civil penalties from the Party under these circumstances would be arbitrary and capricious, and would violate due process.

Finally, Commission enforcement would violate the Party's First Amendment rights. The Party is not simply a vehicle to support federal candidates. It is an association of like-minded individuals constantly seeking adherents to its cause. Urging people to "Vote

Democratic" does not simply benefit a candidate on the ballot. It benefits the Party and its adherents by strengthening to future efforts. The Commission's allocation rules are narrowly drawn to respect this fact. The General Counsel's recommendation upsets this balance.

DISCUSSION

I. Further Enforcement Would Directly Contradict The Plain Text Of Regulations And Statutes

Courts will entertain an agency interpretation of a rule "only when the language of the regulation is ambiguous." Christensen v. Harris County, 529 U.S. 576, 588 (2000). Accord In re Sealed Case, 237 F.3d 657, 667 (D.C. Cir. 2001). An agency interpretation is unlawful when it is "plainly erroneous or inconsistent with the plain terms of the disputed regulation." In re Sealed Case, 237 F.3d at 667 (quotation marks omitted). To adopt any such interpretation would be arbitrary and capricious, and would breach the agency's duties under the Administrative Procedure Act, 5 U.S.C. § 706 (2002). See AFL-CIO v. FEC, 177 F. Supp. 2d 48 (D.D.C. 2001).

To adopt the Factual and Legal Analysis would be plainly erroneous and inconsistent with the plain language of the rules and statutes. First, the Commission would ignore the plain text of a rule that permits allocation of communications urging the general public to vote "without mentioning a specific candidate." 11 C.F.R. § 106.5(a)(2)(iv). Second, the Commission would withhold the protection of a statute that attributes communications to candidates only when "the identity of the candidate is apparent by unambiguous reference." 2 U.S.C. § 431(18)

A. The regulations expressly state that these expenses were to be allocated.

A Commission rule expressly defines the types of expenses a political party may allocate between its federal and nonfederal accounts:

> Committees that make disbursements in connection with federal and nonfederal elections shall allocate expenses according to this section for the following categories of activity:
>
> ... (iv) Generic voter drives including voter identification, voter registration and get-out-the-vote-drives, or any other activities that urge the public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

11 C.F.R. § 106.5(a)(2)(iv) (emphasis added).

This rule controls the treatment of the communications in this case. As the Factual and Legal Analysis acknowledges, the communications "included radio ads scripts, door hangers and ballot applications, all encouraging voters to 'Vote Democratic on May 13, 1997.'" Factual and Legal Analysis at 11 (emphasis added). The General Counsel can point to no instance in which a Party communication mentioned a specific candidate. The plain language of the rule thus allowed the Party to pay for all of them on its generic allocation ratio. See 11 C.F.R. § 106.5(a)(2)(iv).

The Factual and Legal Analysis tries to evade this plain language by coining a new phrase present nowhere in the regulations: "candidate specific." It reasons that because the communications all urged people to "Vote Democratic on May 13, 1997," and because there was only one Democrat on the ballot, the communications must have been "candidate specific." Factual and Legal Analysis at 11. Because they were "candidate specific," they must have been "mentioning a specific candidate," and thus must have been ineligible for allocation. Id. at 11-12.[1]

[1] The Office of General Counsel's reliance on the phrase "candidate specific" recalls its earlier reliance on the phrase "campaign related" – a phrase which also "does not appear to be used in any relevant fashion in Commission regulations." Darryl R. Wold, Lee Ann Elliott and David M. Mason, Concurrence in Advisory Opinion 1999-11. Three Commissioners criticized that phrase as being "so vague as to be virtually devoid of meaning." Id. They called upon the Office of General Counsel to limit itself to the use of "clearly identified, specific provisions of our statute or regulations" when interpreting the law. Id.

This is not an "interpretation" of the rules. This is an effort, "under the guise of interpreting a regulation, to create de facto a new regulation." Christensen, 529 U.S. at 588. Accord In re Sealed Case, 237 F.3d at 669. And, indeed, courts have rejected just such efforts by this agency.

One case involved a respondent who sought to seal a district court proceeding to enforce a Commission subpoena. In re Sealed Case, 237 F.3d at 665. At issue was a Commission rule providing that no complaint "shall be made public by the Commission or by any person or entity without the written consent of the respondent," while stating also that this confidentiality requirement did not "prevent the introduction of evidence in the courts of the United States." 237 F.3d at 665, 669 (quoting 11 C.F.R. § 111.21). The Commission interpreted the rule to mean that the confidentiality requirement did not apply "when evidence ... is filed in court." Id. at 669.

However, the court held that the Commission's interpretation "is not entitled to substantial – or any – deference here." Id. There was "only one way to read the regulation," and to do so otherwise would "permit the agency, under the guise of interpreting a regulation to create de facto a new regulation." Id. (quoting Christensen, 529 U.S. at 588).

The Commission met a similar fate in AFL-CIO v. FEC, 177 F. Supp. 2d 48 (D.D.C. 2001). At issue was another provision of the same rule which required the Commission to make public its dismissal of a complaint "and the basis therefor" within 30 days of notifying the respondents. Id. The Commission claimed that this provision allowed "disclosure of the entire investigatory file." Id.

However, the court rejected this interpretation because it contradicted the plain language of the rule. Id. While the regulation limited disclosure to the certification, general counsel's report and statement of reasons, the interpretation would extend disclosure to other materials not specified by the rule. See id.

Further pursuit of this matter would create exactly the same problem. Here, the rule states that when a party pays for "voter identification, voter registration and get-out-the-vote-drives, or any other activities that urge the public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate," the expense may be allocated. 11 C.F.R. § 106.5(a)(2)(iv) (emphasis added). As with In re Sealed Case, there is "only one way to read the regulation," 237 F.3d at 669, and that is to permit allocation.

B. The statute and regulations expressly state that these expenses need not be attributed to candidate limits.

While section 106.5(d) of the rules tells a party what expenses it may allocate, section 106.1(c) states what expenses are to be counted against candidate limits. Its language is no less clear:

- Expenditures "for registration or get-out-the-vote drives of committees need not be attributed to individual candidates unless these expenditures are made on behalf of a clearly identified candidate." 11 C.F.R. § 106.1(c)(2).

- Payments "for rent, personnel, overhead, general administrative, fundraising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate." 11 C.F.R. § 106.1(c)(1).

Yet the General Counsel tries to evade the plain language of this rule also. The Factual and Legal Analysis contends that communications saying, "Vote Democratic on May 13, 1997," are necessarily made on behalf of a clearly identified candidate because there is only one Democratic candidate on the ballot, and thus they must be counted against contribution or coordinated expenditure limits.

This "interpretation" rewrites not only a Commission rule, but a statute as well, for the Federal Election Campaign Act itself defines a "clearly identified" candidate:

> The term "clearly identified" means that –

(A) the name of the candidate involved appears;
(B) a photograph or drawing of the candidate appears; or
(C) the identity of the candidate is apparent from unambiguous reference.

2 U.S.C. § 431(18).

The regulations essentially repeat the statute's plain command, offering examples of when its conditions may be satisfied. See 11 C.F.R. § 100.17. Under the rule, an expenditure is made on behalf of "a clearly identified candidate" only when: (a) "the candidate's name, nickname, photograph, or drawing appears," or (b) "the identity of the candidate is otherwise apparent through an unambiguous reference such as 'the President,' 'your Congressman,' or 'the incumbent,' or through an unambiguous reference to his or her status as a candidate such as 'the Democratic presidential nominee' or 'the Republican candidate for Senate in the State of Georgia." Id.

It is the plain language of the statute – and not the General Counsel's "interpretation" – that controls the outcome of this case. Simon v. FEC, 53 F.3d 356, 359 (D.C. Cir. 1995). Here, none of the expenditures was for a communication in which "the name of the candidate involved appears." 2 U.S.C. § 431(18)(A). None of the expenditures was to present "a photograph or drawing of the candidate." 2 U.S.C. § 431(18)(B).

Nor could "the identity of the candidate" have possibly been "apparent" from a communication saying simply, "Vote Democratic on May 13, 1997." 2 U.S.C. § 431(18)(C). A voter who did not know who Eric Serna was before seeing the communication would have been just as ignorant afterward. He or she would not necessarily have known that Serna was running in an office to be selected that day, or for that matter, whether he was a Democrat. Indeed, those same voters would have seen the communication for what it was – an effort by the Party to mobilize its adherents as it does in all elections, and to encourage others to identify themselves as Democrats.

Courts rejected Commission interpretations when "the text of the statute is clear, " and instead "give effect to the unambiguously expressed intent of Congress." Simon, 53 F.3d at

359. For example, the Simon case involved statutes requiring the Commission to notify a publicly funded presidential candidate of amounts to be repaid to the federal treasury, and to do so within three years after the last day of the matching fund period. Id. at 358. The Commission tried to argue that it satisfied the requirement by issuing an interim audit report to a candidate, but the court disagreed. The court held that there is "no ambiguity in the notification requirement," and that the interim audit report did "not even purport to notify the candidate" of the amount to be repaid. Id. at 359.

The same outcome is dictated in this case. The statute is equally clear and the "interpretation" equally strained. For expenses to be counted against candidate limits, they must involve an appearance of the candidate's name, a photograph or drawing of the candidate, or an "unambiguous reference" that makes his identity apparent. 2 U.S.C. § 431(18)(C). Just as an interim audit report is not the same thing as a final repayment determination, see 53 F.3d at 359, the phrase "Vote Democratic on May 13, 1997" does not meet the requirement of a reference to Eric Serna.

II. To Enforce The General Counsel's Current Interpretation Against the Party's 1997 Activities Would Violate Due Process, And Would Be Arbitrary And Capricious

Assuming arguendo that the regulations and statute did not foreclose the General Counsel's interpretation, the Commission still could not enforce it against the Party for its 1997 activities. There remains the question of whether, "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform." Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618, 628 (D.C. Cir. 2000). If the answer is no, then to seek civil penalties from the Party would be arbitrary and capricious, and a violation of due process. Id.

Here, the question is not simply whether the interpretation is "plainly wrong." Id. at 628. Nor will "general references to a regulation's policy" suffice to defend it. Id. at 631.

Rather, the question is whether the interpretation was "ascertainably certain" at the time of the conduct at hand. Id. at 628. If the Party could have reasonably assumed that it could allocate the expenses at issue without treating them as contributions or coordinated expenditures, then the Commission cannot seek civil penalties. Id. at 629.

A. The General Counsel's present interpretation of the allocation rules was not 'ascertainably certain' in 1997.

When trying to decide how to treat "Vote Democratic" communications and get-out-the-vote efforts on the eve of a special election in 1997, the first place a state party might have looked was an August 1996 Commission publication that said:

> Activities that urge the general public to register, to vote or to support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate, are not considered contributions or coordinated party expenditures, but costs for this type of activity are allocable.

FEC, Campaign Guide for Political Party Committees 19 (Aug. 1996). This language is notable for three reasons. First, it gives no hint that the rule might be different for a special election. Second, it leaves the reader with the unmistakable impression that a communication must mention a specific candidate to be ineligible for allocation. Finally, it clearly indicates that, when an expense is allocable, it need not be considered a contribution or coordinated expenditure. Id.

If the Commission's clear advice to political party committees was not enough to keep the General Counsel's present interpretation from being "ascertainably certain," its statements in rulemaking would suffice. The Commission specifically discussed the question of special elections when it first published its allocation rules:

> The broader language of new paragraph 106.5(d)(1) also generally covers years in which a special election is held. However, because of the varying situations that might arise, the Commission has not spelled out rules to cover each variation. The allocation formula to be used and attribution of disbursements to specific candidates will have to be determined on a case-by-case basis.

Methods of Allocation Between Federal and Non-Federal Accounts, 55 Fed. Reg. 26,058, 26,064 (1990). A Party reading this language would have concluded that, because the rule "generally covers years in which a special election is held," no different method of allocation was required during a special election. Id. The absence of any later "case-by-case" determination by the Commission would have bolstered this view. Id

A final reason why the General Counsel's interpretation was not "ascertainably certain" in 1997 is that the Party's Republican counterpart felt compelled to seek an advisory opinion from the Commission a year later. Ironically, it was the complainant in this matter – the New Mexico Republican Party – which requested an opinion from the Commission about another special election held on June 23, 1998. See Advisory Opinion 1998-9. The Republican Party declared its intent to make "disbursements for telephone, television, radio and/or direct mail communications urging the general public to vote Republican in the June 23 special election." Id. It asked whether these disbursements would be considered coordinated expenditures for a clearly identified candidate, and whether they could be allocated under 11 C.F.R. § 106.5(d)(1). Only in responding to this request – more than a year after the events in this matter – did the Commission first state the interpretation that the General Counsel now propounds.

All of the foregoing shows that there is no way the General Counsel's interpretation could have been "ascertainably certain" in 1997. See Trinity Broadcasting, 211 F.3d at 631. This bars the Commission from seeking civil penalties against the Party. Id. Accord General Elec. Co. v. EPA, 53 F.3d 1324 (D.C. Cir. 1995). As one court stated in overturning an agency enforcement action:

> Where, as here, the regulations and other policy statements are unclear, where the petitioner's interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not "on notice" of the agency's ultimate interpretation of the regulations, and may not be punished.

General Elec., 53 F.3d at 1333-34.

The Trinity Broadcasting case involved facts even more favorable to the agency than these here. Unlike here, the agency even offered an interpretation of the regulations that "sensibly conformed" to their purpose and text. 211 F.3d at 625. However, the agency's "only clear statements" before the dispute occurred could have led the regulated community to assume "quite reasonably" that a different rule applied. Id at 629. These statements even addressed a different yet similar rule. Id.

The Commission has rightly been reluctant to seek civil penalties under such circumstances. For example, it refused to rely on the "electioneering message" standard to seek repayments from 1996 presidential campaigns, holding that "the regulated community most likely does not have notice as to how this standard will govern its conduct, and it certainly did not have an opportunity to comment on whether it should." Statement of Reasons of Darryl R. Wold, Lee Ann Elliott, David M. Mason and Karl J. Sandstrom on the Audits of Dole for President Committee, Inc., et al., at 3 (June 24, 1999) (emphases in original).

Similarly, when the Commission recently dismissed a complaint about party joint fundraising activities during the 2000 election cycle, two Commissioners explained why they thought it inappropriate to punish party committees for supposedly "coordinating" issue advertisements with federal candidates. In Commissioner Sandstrom's view, the existence of an advisory opinion that could be construed to shield the alleged conduct raised "concerns about due process." Statement of Reasons of Karl J. Sandstrom, MUR 4994 (Dec. 18, 2001). Commissioner Thomas, who would have found reason to believe that a violation had occurred, nonetheless acknowledged that "the mangled state of the law at the time the respondents acted" made punishment "unfair." Statement of Reasons of Scott E. Thomas, MUR 4994 (Dec. 19, 2001).

In fact, the Commission's refusal to pursue enforcement in these cases would jeopardize litigation here. As the court wrote in Trinity Broadcasting: "We find the

Commission's insistence that [the regulation] provided fair notice particularly problematic in view of the Commission's failure to explain satisfactorily how denying Trinity's license can be reconciled with other cases where it found regulatory requirements too unclear to justify sanctioning other broadcasters." 211 F.3d at 631.

B. The lack of a clear party coordination standard in 1997 makes enforcement against the Party inappropriate.

As an initial matter, the question of "coordination" is irrelevant to whether the Commission may seek civil penalties from the Party. On the one hand, if the expenses at issue are allocable as administrative or generic ballot expenses, then the Party was free to coordinate with the campaign. See, e.g., Campaign Guide at 19 (stating that generic voter drive costs "are not considered contributions or coordinated party expenditures"). On the other hand, if the expenses were not allocable, then even if there was no coordination, the General Counsel would still contend that the Party paid for "independent expenditures" with prohibited funds.

Nonetheless, the same due process concerns that prevent the Commission from seeking penalties over the question of allocation also prevent it from seeking civil penalties on the basis of party coordination with candidates:

First, there was no clear legal standard governing "coordination" between parties and candidates during 1997. In 1996, the Supreme Court struck down the Commission's presumption of coordination between parties and candidates. See Colorado Republican Fed. Campaign Comm. v. FEC, 518 U.S. 604 (1996). The Commission then refused to interpret the existing rules in light of the Court's opinion. See Advisory Opinion Request 1996-30.

The Commission did not enact new coordination rules until more than two years after the facts in this matter occurred – and these rules do not even apply to political parties. See General Public Communications Coordinated With Candidates and Party Committees; Independent Expenditures, 65 Fed. Reg. 76,138, 76,141 (2000). The Commission

acknowledged that there had been a "vacuum" in the law. Id. at 76,141. For the Party, this vacuum still persists, because the new rules do not apply to it, and the Commission has yet to enact ones that do. Id.

Second, the facts demonstrate that the Party actually avoided coordination with the candidate. For example, as the General Counsel acknowledges, Eric Serna's campaign manager testified that "he never discussed the ads run with 'soft money' and says he was very careful not to have such discussions." Factual and Legal Analysis at 10.[2]

Once again, the record in this matter demonstrates that the law was unclear, and yet the Party reasonably tried to comply. Under these circumstances, to seek civil penalties would be arbitrary, capricious and contrary to law. See Trinity Broadcasting, 211 F.3d at 632; General Elec., 53 F.3d at 1333-34.

III. Further Enforcement Would Unconstitutionally Abridge The Party's Rights To Speech And Association

Finally, the General Counsel urges Commission action that would violate the Party's First Amendment rights to association and speech. This matter does not simply involve the Party's support for federal candidates. Rather, it goes straight to the heart of the Party's ability to encourage individuals to identify themselves with the Party. The Commission's allocation regulations are arguably narrowly tailored to promote a compelling state interest. The General Counsel's interpretation, however, is not.

As the Supreme Court recently held:

> Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was

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[2] Party Counsel did not receive its first copies of the deposition transcripts in this matter from the court reporters until Thursday, February 14, 2002. Accordingly, while this memorandum quotes in some instances from those transcripts, it does not fully present the witness testimony. The Party reserves the right to supplement its response if a thorough review reveals testimony that would further support the arguments herein.

almost concurrent with the formation of the Republic itself. Consistent with this tradition, the Court has recognized that the First Amendment protects the freedom to join together in furtherance of common political beliefs ... which necessarily presupposes the freedom to identify the people who constitute the association ...

California Democratic Party v. Jones, 530 U.S. 567, 574 (2000) (quotation marks omitted).

Since the inception of the Federal Election Campaign Act, the Court has acknowledged the Act's impact on "the right to associate with the political party of one's choice." Buckley v. Valeo, 424 U.S. 1, 15 (1976). "The Act's contribution and expenditure limitations also impinge on protected associational freedoms." Id. at 22. Its "constraints on the ability of independent associations ... to expend resources on political expression is simultaneously an interference with the freedom of their adherents." Id (quotation marks and brackets omitted).

Accordingly, restraints on party spending "must be closely drawn to match what we have recognized as the sufficiently important government interest in combating political corruption." FEC v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431, 482 (2001) (quotation marks omitted).

The Commission's allocation regulations try to keep restraints on party spending closely drawn, and they arguably do so – as long as they are enforced as written. The sole purpose of these regulations is to ensure that "prohibited funds are excluded from federal election activities." Methods of Allocation Between Federal and Non-Federal Accounts, 55 Fed. Reg. 26,058 (1990).

When it wrote the allocation rules, the Commission wanted to keep them closely drawn, but also wanted to avoid making them too complicated for the political committees that had to comply. Consequently, the Commission chose to apply an "average ballot approach" to state and local parties that allocated their administrative and generic ballot expenses. Id. at 26,064. Under this approach, rather than allocating each expense on an election-by-election basis, the parties would pay all such expenses – regardless of when they

were incurred – "according to the ballot which an average voter would face in that committee's state or geographic area." Id.

As a result, a state party's overall spending from the federal account during an election cycle is supposed to reflect closely the extent of its participation in federal elections – even though some particular allocations might not make sense, such as when a party pays for "Vote Democratic" leaflets in a local election. In fact, the Commission has expressly told state parties that they must adhere to the ratios even during "years in which no federal election is held," because they must account for the portion of their "off-year administrative functions and generic activities that impact on future federal elections." Id. The apparent idea behind the rules is that while the party may overpay from its federal account in connection with some elections, and underpay in others, all of these payments will offset one another over the course of the two-year cycle.

This approach is reflected even by the Commission's special allocation rule for states holding elections in odd-numbered years. Parties in these states may pay for generic voter drives entirely with nonfederal funds during the off year. See 11 C.F.R. § 106.5(d)(2). However, their generic ballot allocation ratio for the even-numbered year is calculated based solely on offices elected during that year – making the ratio for that year higher than it otherwise would have been. Id. Moreover, the parties must allocate their administrative expenses on the same ratio throughout the entire cycle, even if incurred for the off-year election. Id. Again, the obvious intent is to make sure that the party's total payments from the federal account over the two-year cycle is closely drawn to its actual participation in federal elections.

The General Counsel's interpretation would upset this carefully crafted balance, and keep the rules from being closely drawn. It creates an asymmetry in the rules, requiring administrative and generic ballot costs incurred on the eve of a nonfederal special election to be allocated – but disallowing allocation before an election where only a federal candidate

appears on the ballot. The end result is that the party would be forced to overpay from its federal account, thus violating its associational rights. See Buckley, 424 U.S. at 638 (barring "unnecessary abridgment of associational freedoms").

The constitutional violation would be made worse by the fact that the Commission would effectively prohibit parties from conducting meaningful get-out-the-vote efforts in connection with some special elections. If all of the Party's spending in such elections must count against candidate limits – in this case, a contribution limit of $5,000 and a coordinated expenditure limit of $31,810 – then the Party would be unable to perform the traditional role of encouraging Party identification and mobilizing Party voters that it performs in every other election.

Such a rule cannot be "closely drawn," because the Party does not exist simply to support federal candidates in one particular election. As Randy Dukes testified, "a get-out-the-vote program is a Party building activity," in which the Party sees if it can get someone "to vote if she has never voted before and you can get her to vote Democratic." Dukes Depo. at 72. The Party gains the opportunity to energize its current supporters, to attract new ones, and to gain attention for its own mission.

Just as its "off-year administrative functions and generic activities" will affect "future federal elections," 55 Fed. Reg. at 26,064, its get-out-the-vote activities in connection with a special election will impact future nonfederal elections. The Party's voter file will be enhanced, its volunteers will become more seasoned, and its support base will be broadened. As Randy Dukes testified, "It is not about Eric Serna. It is about the fact that there was an election and there was a Democrat there and there are going to be future elections with future Democrats." Dukes Depo. at 273.

CONCLUSION

By ignoring the plain language of the allocation rules, disregarding due process, and ignoring the structure of the rules, the General Counsel achieves an outcome that his office plainly desires but which ultimately does great violence to the rules, due process and the Party's constitutional rights.

The Office of General Counsel does not want an expense's eligibility for allocation to depend not on the bright-line test of whether it mentions a candidate, as the rules provide. Rather, it wants that eligibility to depend on a contextual judgment – made in the first instance, conveniently, by the General Counsel – as to whether an expense is "candidate specific." It wants to hold the Party responsible for complying with its interpretation of the law even before that interpretation has been formally adopted. Finally, it wants to disrupt the careful balance of the Commission's allocation regulations and curtail normal party-building efforts, all in violation of the Party's constitutional rights.

For the foregoing reasons, we respectfully request the Commission to dismiss the complaint and take no further action in this matter.

Respectfully Submitted,

Judith L. Corley
Marc E. Elias
Brian G. Svoboda
PERKINS COIE LLP
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011
(202) 628-6600

Attorneys for the New Mexico Democratic Party

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