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FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

APR 13 2005

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Richard B. Bader
Associate General Counsel

Colleen T. Sealander
Assistant General Counsel

Harry J. Summers
Attorney

Holly J. Baker
Attorney

RE: Proposed settlement in FEC v. Democratic Party of New Mexico, et al.,
(Civ. Action No. 02-0372 (D.N.M.))

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Background

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This case began as MUR 4643, based on a complaint by the Republican Party of New Mexico alleging that DPNM and the Serna Committee violated the Act during the May 1997 special election in the Third Congressional District of New Mexico. The only race on the ballot in that election was the contest to replace Congressman Bill Richardson, who had resigned. At the time of that election, the next scheduled general election was nearly 18 months away. In the closing weeks of the special election, DPNM, following the ballot composition ratio it applied to its generic voter drive activities during the 1998 election cycle, used a spending mix of about 86% non-federal funds and 14% federal funds to finance a variety of get-out-the-vote communications that urged members of the public to vote Democratic. Specifically, DPNM used \$173,800 in non-federal funds to finance \$202,184 in expenditures for Eric Serna. Although these communications did not include the word "Serna," they urged voters to vote Democratic in an election in which Serna was the only Democrat on the ballot, and the Commission concluded that they were therefore express advocacy. See FEC Advisory Opinion 1998-9. In addition, evidence suggested that DPNM coordinated the expenditures with the Serna Committee through extensive contacts between representatives of the two committees.

In February 2002, the Commission found probable cause to believe that DPNM and its treasurer violated 2 U.S.C. 434(b), 441a(a)(2)(A), 441a(d)(3), 441b, and 11 C.F.R. 102.5(a)(1)(i) during the Special Election by making contributions and coordinated expenditures to the Serna Committee that exceeded the limits in the Act by \$180,501, by financing these expenditures with \$173,800 in non-federal funds, and by failing to report \$202,184 of the amount spent in coordination with the Serna Committee on DPNM's financial disclosure reports. In March 2002, the Commission found probable cause to believe that the Serna Committee violated 2 U.S.C. 441a(f) by knowingly accepting \$180,501 in coordinated expenditures from DPNM in excess of the applicable limits.¹

¹ Although the Commission had found reason to believe that the Serna Committee's treasurer, John Pound, had violated the Act, it declined to find probable cause to believe that he had violated 2 U.S.C. 441a(f) by knowingly accepting \$180,501 in coordinated expenditures in excess of the contribution limits.

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Recommendations

1. Accept the proposed Stipulation for Entry of Consent Judgment and Order and Judgment in settlement of this case.
2. Authorize this Office to sign the proposed Stipulation for Entry of Consent Judgment.
3. Take no further action against John Pound, as treasurer.
4. Close the MUR file as to all respondents and send the appropriate letters.

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