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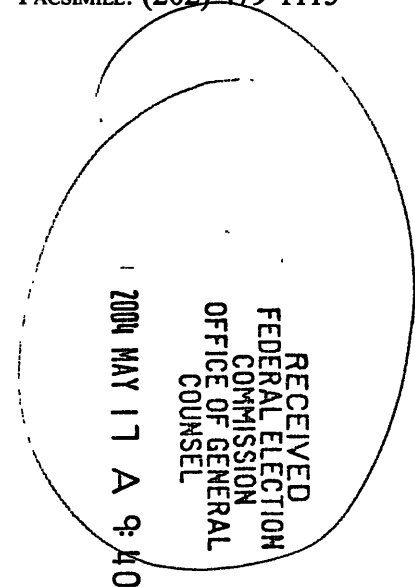
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**Via Facsimile and First Class Mail**

Peter Blumberg, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463



**Re: MUR 5183—DNC Services Corporation/Democratic National Committee**

Dear Mr. Blumberg:

This will respond, on behalf of respondent DNC Services Corporation/Democratic National Committee ("DNC"), to the Commission's letter of March 15, 2004 and the Factual and Legal Analysis supporting the Commission's finding of reason to believe that the DNC violated the Federal Election Campaign Act of 1971 as amended (the "Act") and the Commission's regulations.

In summary, the best information available to the DNC at this time indicates, first, that the DNC reimbursed Rainbow/PUSH Coalition, Inc., within a commercially reasonable period of time, in accordance with the Commission's regulations, for that organization's disbursements for Reverend Jackson's travel on behalf of the Democratic Party. Second, the DNC's payment for that travel was properly made as a payment for generic voter drive activity, under the Commission's regulations in effect at the time. Finally, the DNC's contribution of non-federal funds to the Keep Hope Alive PAC was entirely proper; was not earmarked for any particular purpose; was not in fact used for any activity that would have to be allocated between federal and non-federal funds if paid for directly by the DNC.

For these reasons, the Commission should find no probable cause to believe that the DNC violated the Act or the Commission's regulations, and should close the file in this matter, as to the DNC.

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**I. THE DNC REIMBURSED RAINBOW/PUSH WITHIN A REASONABLE PERIOD OF TIME FOR THE COSTS OF REV. JACKSON'S TRAVEL**

As the Factual and Legal Analysis notes, Reverend Jesse Jackson traveled in the fall of 2000 and made appearances "to be oriented toward voter registration and turnout." (FLA at 3). It is undisputed that a certain amount of this travel was at the request of the DNC and included appearances on behalf of the Democratic Party; that Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH"), paid for the costs of the travel; and that the DNC reimbursed Rainbow/PUSH for these costs.

The DNC does not have any records relating to Reverend Jackson's travel during the fall of 2000. However, a schedule of trips provided to the Commission by Keep Hope Alive PAC, and made available to the DNC, indicates that Rev. Jackson made stops including one or more appearances for the "DNC/Coordinated Campaign" on October 8 through October 10, inclusive; during the period October 19 through October 20, inclusive; and on October 22, 24, 25, 27 and 29. That schedules indicates that on other days during this period, Rev. Jackson made appearances exclusively on behalf of Rainbow/PUSH; other non-profit organizations; and/or the AFL-CIO.

The DNC has been unable to obtain specific information about the costs of Rev. Jackson's travel on the days on which he made one or more appearances on behalf of the DNC. An unaudited income statement for Rainbow/PUSH for the year 2000, made available to the DNC, indicates that for the entire calendar year 2000, the costs of all travel by Rev. Jackson and other employees, was \$310,631.

It is undisputed that the DNC reimbursed Rainbow/PUSH \$250,000 for the costs of Rev. Jackson's travel during the fall of 2000. (FLA at 5). Rev. Jackson traveled a total of 10 days for the DNC. The DNC's payment represented fully 80% of the total costs of all travel by all Rainbow/PUSH officers and employees for the entire calendar year 2000. Even allowing for the fact that Rev. Jackson was the person who probably traveled on behalf of Rainbow/PUSH more than any other person, and even allowing for the fact that his travel during the fall of 2000 may have been somewhat more extensive than during the rest of the year, it is manifest that the DNC's payment must have been much more than enough to cover the total costs of Rev. Jackson's travel on behalf of the DNC.

Rev. Jackson's travel on behalf of the DNC was completed at the end of October. The DNC's reimbursement was made on December 6—little more than 30 days after Rev. Jackson's travel was completed and likely much less than 30 days after the bills for airfare, hotels, etc. were received and paid by Rainbow/PUSH.

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The FLA suggests that the Rainbow/PUSH disbursements “may be considered advances of prohibited contributions or a prohibited extension of credit.” Under the Commission’s regulations, however, payments by a political committee for use of corporate or labor facilities, for other than fundraising activity, are not required to be made in advance of such use. Rather, the political committee is required to reimburse the corporation within a commercially reasonable time. 11 C.F.R. §114.9(d). *See* Advisory Opinion 1986-30. A contribution by the corporation does not result if a political committee pays for goods or services at the usual and normal charge. 11 C.F.R. §100.52(d).

In this case, it seems clear that Rainbow/PUSH was reimbursed for the full costs of Rev. Jackson’s travel within a reasonable period of time.

The FLA suggests that because Rev. Jackson “devoted significant amounts of time to the effort”, “it is reasonable to conclude that a pro-rated portion of his salary payment was made in connection with federal elections.” (FLA at 9). The DNC is not aware of Rev. Jackson’s actual salary. But Even if Rev. Jackson was paid \$500,000/year (obviously his real salary was much less), the pro-rata portion of his salary—10 days out of 360—would amount to \$14,000. The DNC’s payment was more than adequate to cover any such cost plus the full costs of his travel.

## **II. THE DNC’S PAYMENT WAS PROPERLY TREATED AS GENERIC VOTER DRIVE EXPENSE**

Under the Commission’s regulations in effect in 2000, 11 C.F.R. §106.5(a)(2)(iv) & 106.5(b)(2), the costs of generic voter drive activity incurred by the DNC in a presidential election year were to be paid 65% from federal funds. As noted in the FLA, the DNC’s payment was allocated between its federal and non-federal accounts, 65% federal/35% non-federal. The DNC paid the reimbursement of the costs of Rev. Jackson’s travel as a generic voter drive expense.

The FLA appears to take issue with this treatment by citing various reports that on certain stops, Rev. Jackson appeared with Vice President Gore, or expressly advocated the election of the Gore/Lieberman ticket or opposed the election of the Bush/Cheney ticket. (FLA at 4 and footnotes 4 & 5). Although the FLA asserts that “[p]ress accounts indicate that that on at least six occasions, Jackson appeared together at an event with either Al Gore or Joe Lieberman,” (FLA at 3-4), the FLA cites only one such appearance: a meeting and appearance in a parade on September 3, 2000 outside of Pittsburgh. The DNC has no information to suggest that that trip was made at the suggestion or direction of the DNC. Indeed, that trip is not included in the schedule provided to the Commission by Keep Hope Alive PAC and made available to the DNC, and it may well be that the appearance in question was paid for

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or sponsored directly by Gore/Lieberman 2000. No other appearance with Vice President Gore or Senator Lieberman is cited in the FLA.

The FLA, page 4 at note 4, cites unspecified "news accounts attached to the Complaint" as asserting that Rev. Jackson "used the phrase 'stay out of the Bushes' during his travels." The FLA does not identify the news reports; does not identify any specific trips during which Rev. Jackson allegedly used those words; and does not explain why, in any event, those words would be considered express advocacy.

With one exception, *none* of the news accounts set forth in footnote 5 on page 4 of the FLA even purport to be direct quotes of Rev. Jackson, but rather constitute reporters' characterizations of what he said or of the supposed motivation of whatever entity was sponsoring his trip, in asking him to speak. The one exception is Rev. Jackson's appearance at Mount Bethel Baptist Church in Ft. Lauderdale, Florida, on October 8, 2000, an appearance the costs of which were reimbursed by the DNC. A news account of that appearance quotes Rev. Jackson as saying, "choose Gore."

Certainly, one use of words of express advocacy in dozens of appearances in numerous cities does not change the fundamental legal nature of Rev. Jackson's travels. His message was partisan, without doubt. He was urging voters to register to vote Democratic and to vote Democratic. *See* FLA at 8 ("his reported statements accompanying these efforts were of a partisan nature"). The DNC's treatment of the costs of this travel as a generic voter drive activity, within the meaning of former section 106.5(a)(2)(iv), was thus entirely proper.

### **III. THE DNC'S NON-FEDERAL CONTRIBUTIONS TO KEEP HOPE ALIVE PAC WERE ENTIRELY LAWFUL**

Keep Hope Alive PAC is a federal political committee with federal and non-federal accounts. (FLA at 3). The DNC made two contributions to Keep Hope Alive PAC, one for \$35,000 on August 21, 2000 and a second in the amount of \$75,000 made on September 21, 2000. (FLA at 6, note 10; see copies of checks submitted to Commission). Each contribution was made from the DNC's non-federal account to the Keep Hope Alive PAC non-federal account.

The DNC's contributions were not earmarked for any particular purpose. Further, it is our understanding that Keep Hope Alive ("KHA") PAC has determined—and has informed the Commission—that *none* of the contributions made by the DNC were actually used to pay for Rev. Jackson's travels in the fall of 2000.

The FLA indicates that the KHA PAC allocated its administrative and generic voter drive expenses on a 10% federal/90% non-federal ratio. (FLA at 10). The FLA

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asserts that “[i]t is possible that the DNC contributed its funds to Keep Hope Alive PAC knowing that the funds would be used by the PAC to reimburse or pay for Jackson’s travel expenses, thereby allowing the DNC to take advantage of the PAC’s more favorable allocation ratio.” (FLA at 11). There is simply no factual basis whatsoever for this assertion. Not only did the DNC have no idea what use would be made by KHA PAC of its contributions, but KHA PAC did not in fact use those funds for Rev. Jackson’s travels nor, to our knowledge, for any other generic voter drive activity.

Even if the DNC did have some reason to believe that KHA PAC would use its contributions for generic voter drive activity, however, the DNC’s contributions from its non-federal account to KHA PAC’s non-federal account would be entirely proper. *FEC v. California Democratic Party*, 13 F. Supp.2d 1031 (E.D. Cal. 1998), is inapposite. That case involved a contribution by a state party of non-federal funds to a ballot committee—a non-federal entity which by its nature would spend 100% non-federal funds on any of its activities.

By contrast, the instant case involves a contributions from one federal political committee to another federal political committee, with federal and non-federal accounts. It was incumbent on the recipient non-federal political committee—KHA PAC—to allocate its expenses in accordance with the Commission’s allocation regulations. And it would be entirely proper for the DNC to contribute only non-federal funds, to the non-federal account of that federal PAC, even if the DNC knew (and in this case, it did not) that the funds would be used for allocable activity.

That much was made clear by the Commission in MUR 4215. There, after an investigation, the General Counsel recommended a finding of probable cause to believe that the DNC had violated the Act and the Commission’s rules, in that alleged that the Michigan Democratic Party had run generic advertising; that the DNC had transferred federal and non-federal funds to the state party using the state party’s allocation, ratio, which involved substantially less federal money than the DNC’s ratio; and that the DNC had thereby attempted to circumvent the Commission’s allocation rules.

On February 24, 1998, the Commission, by a unanimous vote, rejected the General Counsel’s position and held that the DNC’s transfers of funds were absolutely lawful. The Commission found, therefore, that there was no probable cause to believe that the DNC had violated the law, and closed the case.

In their Statement of Reasons in MUR 4215, the Commissioners found that “there is nothing in the current regulations of the Commission that clearly prevents the activity at issue here.” Statement of Reasons at 1. The Commission noted that the state parties

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retained ultimate control over the funds once in their hands and that each state party decided whether to accept and spend the funds transferred by the DNC.

Finally, the Commission noted that its regulations “clearly do not address the issue of intent with regard to such transfers by national party committees to state party committees.” *Id.* Thus, the Commission ruled, the DNC had no notice that its intent that the transfers be used for generic party activity “could require application of its own allocation ratio rather than the ratios of the state party committees which made the related expenditures to the vendors from their own accounts.” *Id.* at 5. The Commission concluded that, “We believe the DNC’s actions were entirely consistent with a fair interpretation of the Act and of the regulations.” *Id.* (emphasis added).

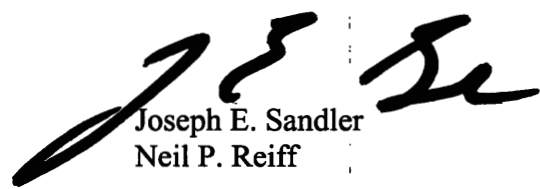
The exact same allocation regulations applied in 2000, when the DNC made its non-federal contributions to the KHA PAC non-federal account. Nothing whatsoever in those regulations made the DNC’s intent or knowledge of the intended purpose of any transfer relevant in any way to the legality of the transfers by the DNC. KHA PAC retained ultimate control over the use of these contributions once the contributions were in its hands. And unlike the disbursements made by the ballot committee in *California Democratic Party, supra*, KHA PAC’s use of these DNC contributions was governed and regulated by the Commission’s own rules—KHA PAC was required to, and to our knowledge in fact did, allocate all of its expenditures in accordance with the Commission’s allocation regulations in effect at the time.

For these reasons, the contributions made by the DNC to KHA PAC were entirely lawful.

**CONCLUSION**

For the reasons set forth above, the Commission should find no probable cause to believe that the DNC has violated the Act or the Commission’s regulations in this matter, and should close the file.

Respectfully submitted,



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DNC Services Corporation/  
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