DEMOCRATIC NATIONAL COMMITTEE

VIA FACSIMILE and FIRST CLASS MAIL

December 17, 2004

Alva E. Smith
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **MUR 5586—Democratic National Committee, Respondent**

Dear Ms. Smith:

This will respond on behalf of respondent DNC Services Corporation/Democratic National Committee ("DNC") to the Complaint filed in the above-referenced MUR. The Complaint does not set forth any factual allegations whatsoever that would establish any violation by DNC of the Federal Election Campaign Act of 1971 as amended (the "Act") or the Commission's regulations. Accordingly, the Commission should find no reason to believe that DNC violated the Act or the Commission's regulations and should dismiss the Complaint and close the file, as to DNC.

1. **No Unlawful Coordination Is Alleged Because There Is No Evidence of Any Payment for Any Communication or Activity by an Entity Other Than DNC Itself**

The entire Complaint is premised on the assertion that a draft of the "Florida Victory 2004" plan (the "Campaign Plan") shows unlawful coordination between federal officeholders and candidates, the Florida Democratic Party, and the DNC, on the one hand, and on the other hand, non-federal entities including the Florida AFL-CIO, the Florida Education Association, the Academy of Florida Trial Lawyers and the Florida SEIU. In fact, as even a cursory reading of the Campaign Plan would show, the Campaign Plan is a plan of activities to be undertaken and paid for *by the Florida Democratic Party ("FDP")*. Not a single word of the Plan relates or refers to any activity to be paid for by any other entity.

As the Complaint itself acknowledges, a payment made by a non-federal entity, if made in "cooperation, consultation, or concert, with, or at the request or suggestion of, a national, state or local committee of a political party, shall be considered to be contributions made to such party committee." Complaint at 1, *citing* 2 U.S.C. §441a(a)(7)(B)(ii). Under the Commission's regulations, a "coordinated communication" results only if a three-part test is met: the communication must be (1) "paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing;" (2) satisfies a "content" standard set forth in the rules; and (3) satisfies at least one of the "conduct" standards set forth in the rules. 11 C.F.R. §109.21(a).

The Complaint in this case does not refer to any communication, or activity of any kind, that was paid for by any entity *other than FDP itself,* with funding substantially by the DNC. The Complaint refers to a "decision-making table" referenced in the Campaign Plan, including representatives of the AFL-CIO, SEIU Florida Academy of Trial Lawyers and Florida Education Association. Even if any of those entities had participated in any discussions or "decision-making" related to the creation or implementation of the Campaign Plan, those entities would be discussing expenditures to be made by the FDP—not by themselves. Accordingly, because none of the activities described in the Campaign Plan were to be "paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing," 11 C.F.R. §109.21(a)(1), there cannot possibly have been any unlawful "coordination" within the meaning of the Commission's rules.

Indeed, state party campaign plans identical in form and purpose to the Campaign Plan attached to this Complaint were extensively considered by the Commission in MUR 4291, dealing with the review and approval by labor organizations of such state party "coordinated campaign plans." The General Counsel recommended, and the Commission voted, to take no further action, precisely because these plans did *not* refer to any contact or communication with the general public *by* any labor union. Rather, "[w]here the ...plans referred to communications to the general public they referred to the state parties' plans for their *own* communications to the general public." MUR 4291, General Counsel's Report at 16 (June 12, 2000) (emphasis in original). The General Counsel found that, while the unions' review of the state party campaign plans may well have afforded the unions access to non-public information about the plans, projects, strategies and needs of the DNC and state Democratic Parties, "under no theory of law....has coordination of a recipient political committee's *own* communications with a third party rendered the political committee's communications illegal." *Id.* at 19 (emphasis added).

Exactly the same conclusion must be reached in this case. The Campaign Plan may have been reviewed at some point by one or more of the labor or other organizations referred to in the plan, but the entire plan deals only with FDP's own communications and activities. For this reason, the Complaint does not allege that anyone paid for any

coordinated communication or activity that could result in an in-kind contribution to DNC under the Act or the Commission's rules.

2. None of the Specific Assertions In the Complaint Demonstrate or Imply Any Coordinated Communication or Other Coordinated Activity

None of the specific assertions in the Complaint remotely demonstrate or imply the existence of any coordinated communication, or any other activity that was coordinated in a way that could result in an in-kind contribution. *First,* the Complaint charges that the Campaign Plan discussed spending non-federal funds for certain minority media, "the exact type of spending that federal candidates and officeholders and national political party officials are now prohibited from being involved in." Complaint at 2. But national party officials and federal candidates and officeholders are not prohibited, under the Bipartisan Campaign Reform Act of 2002 ("BCRA"), from discussing with state parties the spending of non-federal funds. To the contrary, "Nothing on the face of §323(a) [2 U.S.C. §441i(a)] prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money." *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 160 (2003).

Second, the Complaint charges that the Campaign Plan contains a memorandum from "Stephen F. Rosenthal, the Chief Executive Officer of a federal political committee known as 'America Coming Together' or ACT." Complaint at 2. The allegation is absurd. The Stephen F. Rosenthal who wrote that memo is a Miami, Florida lawyer who provided legal advice to FDP and represented FDP in court on several occasions. The memo attached as Appendix E to the Campaign Plan is indeed marked "Attorney Client Privileged, Attorney Work Product." Stephen F. Rosenthal is not, is not related to, and has nothing whatsoever to do with the Steve Rosenthal that is an official of ACT. Indeed, the latter individual's name is actually Steven, not Stephen, Rosenthal. *See e.g.*, "One Doorbell One Vote Tactic Re-emerges in a Bush-Kerry Race," New York *Times*, April 16, 2004, p. A1.

Third, the Complaint refers to a signature page in the Campaign Plan, stating "I hereby agree to participate in the coordinated campaign, Florida Victory 2004, and to contribute field and fundraising help at the levels ascribed below." Complaint at 2. The Campaign Plan, of course, is not signed by any of the organizations listed on the signature page. Nor were there ever any pages detailing any "field help" to be provided by any entity listed on that page.

Fourth, the Complaint suggests that the Florida Democratic and Republican parties differed significantly in the percentage of their expenses paid with non-federal funds, implying, according to the Complaint, that "many of the federal functions of the Florida Democratic Party are now being carried out by the organizations that are

signatories to" the DNC Campaign Plan. Complaint at 3. The allegation is patently absurd. The spending figures cited by the Complaint are from reports covering the period through August, before most spending for the general election even occurs. Comparison of the spending figures reported through the Post-General Reports filed by each party committee make clear that, when expenditures for federal election activity *paid for entirely in federal funds* are taken into account, the percentages of the total spending by each state party paid for in federal funds are nearly identical:

	Republican Party of Fla.	Fla. Democratic Party
Total Federal Disbursements	$15,788,557	$11,284,004
Total Disbursements	$17,577,791	$13,643,445
%age of total disbursements paid in federal funds	89.8%	82.7%

Source: Post-General Reports, Democratic Executive Committee of Florida; Republican Party of Florida

None of the specific assertions in the Complaint, then, even remotely suggest that there were any communications or other activities by third party entities that were "coordinated" with DNC within the meaning of the Act or the Commission's rules.

CONCLUSION

For the reasons stated above, the Commission should find no reason to believe that the DNC has violated the Act or the Commission's regulations and should dismiss the Complaint and close the file, as to the DNC.

Respectfully submitted,

Amanda La Forge
Chief Counsel