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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
MUR 6507) DISMISSAL AND
DNC SERVICES CORPORATION/) CASE CLOSURE UNDER
DEMOCRATIC NATIONAL COMMITTEE) THE ENFORCEMENT
AND ANDREW TOBIAS, AS TREASURER) PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6507 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6507.

1 In this matter, the complainant, Daniel J. Dunn, states that a July 2009 financial
2 disclosure report filed by DNC Services Corporation/Democratic National Committee (the
3 "Committee" or the "DNC") and Andrew Tobias, in his official capacity as treasurer,
4 incorrectly shows that he made a \$500 contribution to the Committee on June 2, 2009.

5 In response, the Committee acknowledged that the contribution at issue was
6 erroneously attributed to Mr. Dunn, instead of the actual contributor, Marguerite
7 Lederberg. The Committee states that Ms. Lederberg's contribution was accompanied by
8 a DNC contribution card that included a request for the contributor's name, mailing
9 address, occupation, and name of employer, and that the report complied with the
10 Commission's "best efforts" requirements. *See* 2 U.S.C. § 432(i) and 11 C.F.R.
11 § 104.7(a).

12 The Committee explains that the company that processes its contributions, Merkle
13 Response Management Group ("Merkle"), apparently input the donor code associated
14 with Ms. Lederberg's contribution incorrectly. Mr. Dunn's name was also in Merkle's
15 database and, as a result of the input mistake, the contribution was incorrectly attributed to
16 him. In addition to pledging to correct the error, the Committee asserts that its efforts to
17 collect and report the information required by the Commission constituted "best efforts"
18 under the Act and Commission's regulations and, therefore, its reports should "be
19 considered in compliance with the Act." 11 C.F.R. § 104.7(a).¹

¹ The Commission's "best efforts" policy is described in greater detail at
http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-13.pdf.

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1 Based on the available information, it appears that the Committee's misattribution
2 of the contribution to Mr. Dunn, instead of to Ms. Lederberg, was likely the result of an
3 inadvertent input error. It also appears that the Committee made an effort to seek the
4 contribution information required by the Act and Commission's regulations, but has not
5 yet amended its July 2009 monthly report to correct the contribution attribution error at
6 issue. As a consequence, the Committee cannot "be considered in compliance with the
7 Act" under the Act's "best efforts" provision. 2 U.S.C. § 432(i); *see Statement of Policy*
8 *Regarding Treasurers' Best Efforts*, 72 Fed. Reg. 31438, 31440 (June 7, 2007). However,
9 because the error appears to have been inadvertent and the Committee promises to revise
10 its July 2009 monthly report to correctly report the contribution at issue, we believe that
11 further enforcement action is unwarranted.

12 **RECOMMENDATIONS**

13 Under EPS, the Office of General Counsel has scored MUR 6507 as a low-rated
14 matter. Therefore, in furtherance of the Commission's priorities as discussed above, the
15 Office of General Counsel believes that the Commission should exercise its prosecutorial
16 discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The
17 Office of General Counsel also recommends, however, that the Commission remind the
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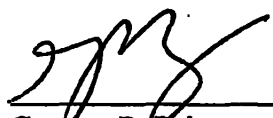
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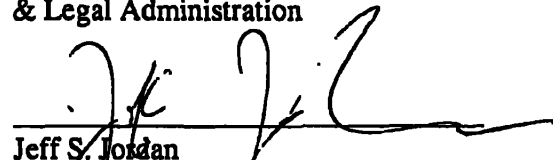
1 Committee to amend its 2009 July monthly report to ensure that the contributor
2 information disclosed is accurate, pursuant to 2 U.S.C. § 434(b)(3)(A). We also
3 recommend that the Commission, close the file, and send the appropriate letters.

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5 Anthony Herman
6 General Counsel

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11 2/7/12
12 Date

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