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July 11, 2018

Via email to CELA@fec.gov

Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 First Street, NE
Washington, District of Columbia 20463

Attn: Donna Rawls, Paralegal

MUR 7390: Response of Republican National Committee and Anthony W. Parker, Treasurer

To Whom It May Concern:

On behalf of Republican National Committee and Anthony W. Parker, Treasurer (together, "RNC"), I submit this response to the Complaint filed by Claudia Barber ("Complainant") in MUR 7390.

As a preliminary matter, the Complaint is facially defective and the General Counsel should have dismissed it summarily pursuant to 11 C.F.R. § 111.5(b). First, it is only partially sworn. Complainant—who identifies herself as an attorney—swears only that she based eight numbered paragraphs of the Complaint on an article she read on the Internet. The rest of the Complaint is unsworn, and thus fails to meet the requirement of 11 C.F.R. § 111.4(b)(2) that “the contents of the complaint shall be sworn to and signed in the presence of a notary.”

Second, the Complaint on its face fails to “describe a violation of statute or regulation over which the Commission has jurisdiction,” 11 C.F.R. § 111.4(d)(3). The Complaint neither identifies nor implicates any federal statute or regulation. Instead, it is founded entirely on Maryland state law, and on the Complainant’s misguided belief that Maryland law prohibits the RNC—a federal political party committee—from making disbursements to pay for legal fees arising out of “investigations or charges involving misconduct.” This, of course, is patently wrong, as RNC is not subject to regulation by the State of Maryland of its expenditures and activities in connection with federal candidates and elections. 52 U.S.C. § 30143(a). The Federal Election Campaign Act, 52 U.S.C. § 30101 et seq. (the “Act”), “preempt[s] any provision

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of State law with respect to election to Federal office," and "supersedes State law concerning the . . . [I]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7.

For these reasons, the Complaint "does not comply with the requirements of 11 C.F.R. 111.4." 11 C.F.R. § 111.5(b). In such a situation, the Commission's regulations are clear: "[N]o action shall be taken on the basis of that complaint." *Id.* The General Counsel should have so notified the Complainant and all Respondents, that should have been the end of this matter, and RNC and the other Respondents should not have had to respond to this technically deficient, legally baseless Complaint.

As to the substantive issue in this matter—the use of party committee funds to pay legal expenses—federal law expressly permits a national party committee to raise and spend funds "to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests *and other legal proceedings.*" 52 U.S.C. § 30116(a)(9)(C) (emphasis added). In response to requests from federal candidates, the Commission repeatedly has approved the use of campaign funds to pay legal fees incurred in connection with law enforcement and grand jury investigations, and legal proceedings arising out of such investigations, where the allegations relate to the candidate's campaign or duties as a federal officeholder, and where the legal fees would not have been incurred but for the candidate's campaign or duties as a federal officeholder. *See, e.g.*, AOs 2009-20 (Visclosky), 2009-12 (Coleman), 2009-10 (Visclosky), 2008-07 (Vitter), 2006-35 (Kolbe), 2005-11 (Cunningham), 2003-17 (Treffinger).¹

At bottom, the Complaint alleges only that RNC paid legal fees arising out of an investigation. The Complaint fails to identify any federal law or regulation that RNC's payments violated—nor can it, because there is none. For this reason, if not based solely on the Complaint's technical defects, the Commission should take no further action on this Complaint other than to dismiss it immediately.

Sincerely,

Chris Ashby

cc: Anthony W. Parker, RNC Treasurer
John R. Phillippe, RNC Chief Counsel

¹ Of course, as a national party committee, RNC is not subject to the strictures of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.2(e).