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OFFICE OF GENERAL
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Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Mr. Norton:

We are writing to provide comments regarding the Office of General Counsel's ("OGC") Draft Advisory Opinion 2004-12. As you know, our firm represents the nine state party committees ("the Committees") that requested this opinion regarding the creation of Democrats for the West ("DFW"). Generally, the Committees agree with and support the analysis of OGC's draft opinion. However, the Committees would like to provide comments on two specific points in the draft opinion.

First, the Committees disagree with one aspect of OGC's approach with respect to the attribution of contributions. Although we believe OGC's approach of allocating the contribution equally amongst the participants is reasonable, the Committees do not believe that each Committee should be penalized by the donor history of another. Rather, each committee's portion of the limit should be analyzed separately for purposes of determining the maximum federal contribution for any particular donor. The draft opinion provides an illustration whereby each Committee's limit is affected by the direct contributions by a potential contributor to the DFW. Thus, if a donor gave \$9,500 to one participating Committee, the partitioned share of another state party's limit would also be likewise affected and the donor could only contribute up to \$4,500 to DFW. This approach is unfair to the other Committees and unnecessarily rigid. The Commission should view each participating Committee's proportional limit as independent of the others and should not penalize other Committees based upon a donor's history to another Committee. Thus, using the Commission's example that same donor should be able to contribute up to \$9,389 to DFW. This would include the \$8,889 of annual limit attributed to the eight other participants, as well as the \$500 remaining for the Arizona Democratic Party in the OGC

example. It does not make sense to reduce the amount of the contribution for each participant based upon donor history for one of the participating Committees. Similarly, a donor who had given the maximum amount to one state party committee should be entitled to still contribute \$8,889 to DFW's federal account. Of course all contributions would be subject to the aggregate, biennial per cycle, limit of \$37,500.

Second, draft opinion incorrectly applies to appearances at state party fundraising events, the rules the Commission has articulated in the context of fundraising by federal candidates and officeholders for non-federal committees. At the outset, the Draft Opinion correctly notes that Federal candidates may attend, speak, or be featured guests without limit at a DFW fundraising event. 11 C.F.R. § 300.64(b). However, the draft opinion goes on to suggest that "if DFW distributes any written invitation to its fundraising events that mention a Federal candidate or individual holding Federal office, then any solicitations contained in the invitation would constitute a solicitation by the Federal candidate or individual holding Federal office (so long as the candidate or Federal officeholder had consented or agreed to be mentioned in the invitation)." The draft goes so far as to require that if a federal candidate or officeholder agrees to be listed as a "featured guest" on an invitation to a state party fundraiser, then the invitation must expressly state that the candidate is only requesting contributions that comply with the Act's limitations and source prohibitions.

These requirements are absolutely inconsistent with and in violation of the Commission's own regulations. Specifically section 300.64(a) clearly states that a state committee of a political party may "advertise, announce or otherwise publicize that a Federal candidate or individual holding federal office will attend, speak, or be a featured guest at a fundraising event..." Thus, with respect to state party committees, the fact that a federal candidate or officeholder is featured as a guest or speaker on an invitation to a state party fundraising event does *not* convert that invitation into a solicitation that would subject contributions received in connection with that event to any restrictions under 2 U.S.C. § 441i(e)(1)(B).

If you would like to discuss this comment further or if you have any additional questions, feel free to call me at (202) 479-1111.

Sincerely,



Neil Reiff